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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 270

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP AND STATE OF WISCONSIN, PETITIONERS,

vs.

E. E. McCARTIN AND CONTINENTAL CASUALTY COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

PETITION FOR CERTIORARI FILED JULY 3, 1946.

CERTIORARI GRANTED OCTOBER 14, 1946.

STATE OF WISCONSIN

IN SUPREME COURT

August Term, 1945 No. 149

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation,
Plaintiffs and Respondents,

v.

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN,
Defendants and Appellants.

APPELLANTS' APPENDIX

INDEX

Proceedings in Supreme Court of Wisconsin	a
Appellants' appendix	a
Index to appendix	174
Clerk's certificate	178
Notice of appeal from Circuit Court of Dane County	179
Minute entry of argument and submission	180
Judgment	180
Opinion, Barlow, J.	181
Stipulation re endorsements on settlement contract	186
Clerk's certificate	187
Order allowing certiorari	187

APPELLANTS' APPENDIX

Page of Record

232-236 DIRECTIONS FOR JUDGMENT (omitting formal parts)

232 The question presented in this action of review is whether or not, under the full faith and credit clause of the Federal Constitution, (Sec. 1 of Article 4) did proceedings for compensation which resulted in a final award in the State of Illinois (where the employment contract was made and where both employer and employe were residents) bar recovery under the Compensation Act of Wisconsin (where the injury occurred).

The Industrial Commission answered the question "no," and proceeded to enter an interlocutory award. The plaintiffs contend that the commission was without jurisdiction to do so in view of the decision in the case of Magnolia Petroleum Co. v. Hunt, 320 U. S. p. 420; 150 A. L. R. p. 413.

The facts are not in dispute. A recitation of the jurisdictional facts in sequence will be helpful to determine whether they are similar and conform to the facts in the Magnolia case. Both E. E. McCartin, employer, and Leo Thomas Kopp, employe, were residents of the State of Illinois. Kopp had worked for McCartin for several years prior to May, 1943. Pursuant to the contract made in Illinois, Kopp agreed to work for McCartin on a building job at Beloit, Wisconsin. The job lasted about ten months, during which time Kopp drove

Page of Record

back and forth between his home in Rockford, Illinois, to his job in Beloit, Wisconsin. On May 5, 1943, while so employed, Kopp suffered an injury to his left eye which resulted in a traumatic cataract.

On June 17, 1943, Kopp filed an application, dated June 4, 1943, for an adjustment of claim with the Wisconsin Industrial Commission. On June 17, 1943, McCartin, and his insurance carrier Continental Casualty Insurance Company, filed an answer with the Wisconsin Industrial Commission objecting to the jurisdiction of Wisconsin to hear the claim. On July 20, 1943, Kopp filed an application for adjustment of claim with the Illinois Industrial Commission in which the general nature of the dispute was given as "whether Illinois or Wisconsin has jurisdiction in my case."

Under date of October 11, 1943, the Industrial Commission of Wisconsin wrote the Continental Casualty Company, a copy of which was mailed to Kopp, which read in part as follows:

> ". . . We have informed him (Kopp) that under the Supreme Court holdings in Wisconsin, he is entitled to proceed under the Illinois Act and thereafter claim compensation under the Wisconsin Act with credit to be given for the amount paid to him under the provisions of the Illinois Act, regardless of whether or not he may later make claim under the Wisconsin Act. * * *"

Page of Record

233 On November 4, 1943, a settlement contract was filed with the Illinois Commission in which it was expressly stated: "This settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin." On November 29, 1943, Kopp filed with the Illinois Commission a petition for a lump sum payment. On December 3, 1943, a hearing was had on said application and it was approved and an order was entered on January 10, 1944. No petition to review the settlement contract or lump sum payment was made and no action to review these orders was ever commenced. Full payment of the amount so ordered has been made.

On December 20, 1943, the Supreme Court rendered its decision in the Magnolia case. The Wisconsin commission proceeded with Kopp's application and a hearing was had on February 20, 1944. On April 18, 1944, the examiner entered an interlocutory award, which findings and order were affirmed by the commission under date of May 15, 1944. At this hearing it was admitted by the plaintiffs that at the time Kopp was injured McCartin was an employer subject to the provisions of the Wisconsin Act and that Kopp sustained personal injury proximately caused by the accident. However, the plaintiffs contended there and now here contend that under the doctrine of the Magnolia case, supra, the commission was without jurisdiction to entertain the application and make an

Page of Record

award; that the award being final in the State of Illinois, it was a bar to further recovery for the same injury under the Compensation Act of Wisconsin.

Before the Magnolia case, our court followed the rule that an "award already had under the Workmens' Compensation Act of another state will not bar a proceeding under an applicable act, but the amount paid on the prior award in another state will be credited on the second award." Interstate Pr. Co. v. Indus. Comm. 203 Wis. 466; Salvation Army v. Indus. Comm. 219 Wis. 343; and Wisconsin Bridge and Iron Co. v. Indus. Comm. 222 Wis. 194.

In conformity with these decisions, the commission was correct in its letter of October 11, 1943, when it advised the parties that Kopp was entitled to proceed under the Illinois Act and thereafter claim compensation under the Wisconsin Act, with credit to be given for the amount paid under the provisions of the Illinois Act. There is no question that it was this information that prompted Kopp to have inserted in the compromise settlement filed with the Illinois Commission the reservation, "This settlement does not affect any rights that applicant may have under the Workmens' Compensation Act of the State of Wisconsin."

The defendants contend that the Magnolia case must be given a restricted application because it was decided by a five to four decision, wherein the

Page of Record

majority of the court did not believe the opinion correct, and as pointed out above, that it was contra to the established law in Wisconsin. However, the Supreme Court, on January 17, 1944, denied a petition for rehearing in this case so that the rule therein declared became definitely established. The decisions of the Supreme Court, whether by a divided court or not, become the supreme law of the land on all matters involving a federal question. State courts must conform to such decisions. In the Magnolia case, it was admitted that there may be exceptional cases where the rule would not apply, but they made it definite that the Supreme Court of the United States is the final arbiter of the extent of those exceptions. Magnolia Petroleum Co. v. Hunt, 150 A. L. R. p. 413 on p. 418.

234 This court is unable to discover that the instant case falls within any of the exceptions stated in the Magnolia case. The facts in the instant case are more favorable to the reasoning and rule than they were in the Magnolia case itself. In fact, the evidence in the Magnolia case disclosed that there was a near fraud perpetrated on Hunt and that the Industrial Accident Board of Texas acted in excess of its powers when it made the award. See first paragraph of dissenting opinion of Justice Black, Magnolia Petroleum Co. v. Hunt, 150 A. L. R. 413, p. 425. It appears in this evidence that after signing application forms while in a hospital

Page of Record

and on which insurance carrier made payments, Hunt returned to his home state of Louisiana where he found that his interests would be more fully protected than in Texas and he notified the insurance carrier of his intention to claim there. The insurance carrier stopped payments and apparently pressed the claim before the Texas commission. Four days later, without any request from Hunt, the Board notified him at his Louisiana home that a hearing would be held in Texas within two and a half weeks. Hunt did not appear and participate in these proceedings and the award was made. Hunt declined to receive payments on this award and pressed his claim in Louisiana which made an award for a larger sum, but credited the payments he had received from the Texas insurer.

In the instant case, although Kopp filed first in Wisconsin, he then filed in Illinois, the state of his residence. He was in no way misled as to his rights. He could choose which state in which to adjudicate his claim. He waited and elected to press his claim in his home state. It is recognized that the home state may have a superior interest in providing compensation for an injured employe than a foreign state where the injury occurred while temporarily employed. This argument, although it was considered in the dissenting opinion of Justice Black, was brushed aside in the majority decision. See Magnolia case, 150 A. L. R. pp.

Page of Record

419 and 420. The only purpose in now mentioning it is to show that the merits are much stronger in the instant case.

The crux of the decision in the Magnolia case hinges on the following language:

> "The grounds of recovery are the same in one state as in the other, the injury to the employe in the course of his employment. The whole tendency of our decisions under the full faith and credit clause is to require a plaintiff to try his whole cause of action and his whole case at one time. He cannot split up his claim and 'a fortiori, he cannot divide the grounds of his recovery.' " Magnolia Petroleum Co. v. Hunt, 150 A. L. R. 413, p. 422.

This language is almost identical with that of our court in cases which arise solely within the state. State ex rel Watter v. Indus. Comm. 233 Wis. 48.

Continuing, the Supreme Court, on page 422 in the Magnolia case, stated:

> "Respondent was free to pursue his remedy in either state but, having chosen to seek it in Texas, where the award was res judicata, the full faith and credit clause precludes him from again seeking a remedy in Louisiana upon the same grounds." * * *
>
> "But as we decided in the Schendel Case it is a very different matter to say that recovery can be had in every state which affords a remedy."

Page of Record

235 The commission pinned its reason for assuming jurisdiction and making an award on the ground that the Magnolia case is inapplicable because rights under the Wisconsin Act were expressly reserved in the Illinois proceedings by virtue of the settlement contract. The settlement contract, however, had no standing or legal effect until it was approved by the Illinois commission. It is the award and not the contract that is res judicata. The Illinois commission gave no weight to the reservation clause in the settlement contract when it ordered a lump sum payment on an award previously made. There is no evidence that the Illinois commission made a smaller award because of the reservation. The matter was carefully considered at that hearing. As if the Illinois commission had a premonition of the coming of the decision in the Magnolia Case, the following testimony took place before Commissioner William John Granata on December 3, 1943, when the petition was heard for the payment of a lump sum:

"The Commissioner: You are intelligent. I will approve the Lump Sum Settlement Petition if you want it but I just want you to understand it is a full settlement and it is final, you cannot make claim—

A I have thought that over—

Q In the future as against E. E. McCartin under the provisions of the Compensation Act for the injuries you sustained on May 5, 1943, for that injury to the left eye. In other words this com-

Page of Record

pletely closes out your case so far as any medical, surgical or hospital expense, or as far as any additional compensation is concerned, you understand that?

A Well, does that—I do not know whether you know this. When this injury happened to me it was reported in Wisconsin.

The Commissioner: If you are concerned about the Workmens Compensation Act in Wisconsin they have a provision in there this Settlement does not affect any rights the Applicant may have under the Compensation Act of the State of Wisconsin. I do not know what it might mean, what your rights are in the State of Wisconsin — I do not know whether the Wisconsin Act provides for any increase where it has been already closed out in another state, I do not know but that provision is in there. What it is worth I am in no position to advise you. I sit only as a member of the Industrial Commission of the State of Illinois. I do not know what the Wisconsin Act is. I do not know what rights you have under the Wisconsin Act, if any. I cant say you will be protected there, I do not know.

Do you understand this thoroughly? Is there anything you do not understand you think I could advise you on?

A I have been through this matter for the last six months. I have thought it over thoroughly. I would very much appreciate it if you would give me a lump sum. I will take chances on Wisconsin." See transcript of Testimony, Respondent's Exhibit 9, pages 11 and 12.

Page of Record

As stated before, this reservation was no doubt prompted by the letter of the Industrial Commission of October 11, 1943. That letter did state correctly the law as applied in Wisconsin previous to the Magnolia case. The Illinois Commission did not heed or consider that reservation, but made the final award upon the merits and as requested by Kopp as appears from the testimony above quoted. This award was paid. When that had been done, the full faith and credit clause of the United States stepped in and cut off any rights to a second award in Wisconsin. That is the effect of the holding in the Magnolia case. There is no doubt a moral obligation on the part of the com-
236 mission to grant a second award because of the advice given. However, when that right is challenged in court, it must yield to the supreme law of the land. The court is satisfied that this case is controlled by the rule in the Magnolia case.

Whether or not the State of Wisconsin has an interest by virtue of Sec. 102.59 of the statutes is not before the court. The commission made no order but only reserved jurisdiction to do so. Therefore, the findings, order and award of the commission under date of May 15, 1944, should be set aside and Kopp's application should be dismissed.

Plaintiffs' attorneys may draw the proper Findings and Judgment in accordance with this

Page of Record

opinion, submitting the same to the Attorney General before it is presented to this court for signature.

Dated November 7, 1945.

2-5 COMPLAINT (only pertinent portions are printed)

* * *

4 8. That plaintiffs are aggrieved by reason thereof and bring this action for a review of said findings, order and award upon the following grounds:

(a) That defendant, Industrial Commission of Wisconsin acted without and in excess of its powers in making the finding "that applicant was an employe subject to the provisions of the Workmen's Compensation Act of Wisconsin" in that such finding is not supported by the evidence and is contrary to law.

(b) That defendant, Industrial Commission of Wisconsin acted without and in excess of its powers in making the finding "that the injury comes within the jurisdiction of the Wisconsin Act" in that such finding is not supported by the evidence and is contrary to law.

(c) That defendant, Industrial Commission of Wisconsin acted without and in excess of its powers in making the finding "that an award under that act (the Wisconsin Act) is not barred by the

Page of Record

proceedings in Illinois" in that such finding is not supported by the evidence and is contrary to law.

(d) That defendant, Industrial Commission of Wisconsin had no jurisdiction and entered said order and award illegally and without right because the employer and employee involved were residents of the State of Illinois where their contract of employment was entered into and were subject exclusively to the Illinois Workmen's Compensation Act and the Illinois Industrial Commission had exclusive jurisdiction and because, prior to the date of said order and award defendant, Leo Thomas Kopp, elected to accept the benefits provided by the Illinois Act and that in making said order and award without jurisdiction defendant, Industrial Commission of Wisconsin, acted without and in excess of its powers.

(e) That the settlement contract entered into between plaintiff, E. E. McCartin, and defendant, Leo Thomas Kopp, in the State of Illinois was duly approved by the Illinois Industrial Commission and thereby became, was and had the same force and legal effect as an award and was and is final and conclusive and res adjudicata and both said approved settlement contract and the lump sum payment order referred to in paragraph No. 4 hereof bar further recovery for said injury in the State of Illinois, and that defendant, Industrial Commission of Wisconsin, was and is required by Article IV, Section 1 of the United States Consti-

Page of Record

tution to give full faith and credit to said award of the Industrial Commission of Illinois and acted without and in excess of its powers in failing so to do and in entering an award against plaintiffs.

* * *

7-8 SEPARATE ANSWER OF DEFENDANT, INDUSTRIAL COMMISSION OF WISCONSIN (only pertinent portions are printed)

7 * * *

2. Denies that it acted without or in excess of its powers in making the following finding:

"* * * that the applicant was an employe subject to the provisions of the workmen's compensation act of Wisconsin,"

and denies that said finding is not supported by the evidence or is contrary to law.

3. Denies that it acted without or in excess of its powers in making the following finding:

"* * * that the injury comes within the jurisdiction of the Wisconsin Act,"

and denies that said finding is not supported by the evidence or is contrary to law.

4. Denies that it acted without or in excess of its powers in making the following finding:

"* * * that an award under that act [the Wisconsin Act] is not barred by the proceedings in Illinois,"

Page of Record

and denies that said finding is not supported by the evidence or is contrary to law.

5. Denies that it had no jurisdiction or that it entered its order or award illegally or without
8 right; denies that the employer and employee involved were subject exclusively to the Illinois workmen's compensation act or that the Illinois industrial commission had exclusive jurisdiction; denies that in entering its order or award it acted without or in excess of its powers.

6. Denies that the settlement contract referred to in paragraph numbered 8 (e) of the complaint herein was or had the same force and legal effect as an award, and denies that it was or is final and conclusive and res adjudicata; denies that Article IV, Section 1 of the United States Constitution required this defendant to give full faith and credit to the award of the Industrial Commission of Illinois, and denies that its order and award violated the provisions of Article IV, Section 1 of the United States Constitution.

* * *

11-12 SEPARATE ANSWER OF DEFENDANT, STATE OF WISCONSIN (essentially the same as separate answer of industrial commission)

Page of Record

18 APPLICATION FOR ADJUSTMENT OF CLAIM (only pertinent portions are printed)

STATE OF WISCONSIN
Industrial Commission of Wisconsin

APPLICATION FOR ADJUSTMENT OF CLAIM
Workmen's Compensation Act

Leo Thomas Kopp Case No. 79933-1 Employe.

vs.

E. E. McCartin Employer.

Continental Casualty Company Insurance Carrier.

(Name will be furnished by the Industrial Commission on request)

The petition of the applicant respectfully shows:

1. Address of Employe
Martin Ave. Route 1, Rockford, Illinois
2. Address of Employer
973 No. Main St. Rockford, Illinois
3. Accident occurred at
Beloit, Wisconsin on the 5th day of May
(City or Town)
1943, and was caused as follows: Was using hammer and chisel on masonery work on foundation for house and piece of steel either from hammer or chisel bounded upward and lodged near optic nerve. Permanent injury to or possible total loss of sight in left eye.

Page of Record

8. Disability for which compensation is claimed 18 days temporary disability but permanent disability is claimed.

(State how long disabled and whether there is any permanent disability. If the injury resulted in death give the date of death)

* * *

12. Compensation paid injured $ None

13. What dispute has arisen as to liability? Only dispute as to amount, and jurisdiction between Wisconsin and Illinois.

14. Where should hearing be scheduled Beloit, Wisconsin

* * *

Wherefore the applicant prays that the respondent be required to answer the charges herein and that an order or award be made by the Industrial Commission granting such relief as the applicant may be entitled to in the premises.

Dated at Beloit, Wisconsin, this 4th day of June, 1943

Signed Leo Thomas Kopp

(Applicant must sign here)

* * *

RECEIVED
Jun 7 - 1943
INDUSTRIAL COMMISSION

21-23 ADMISSION OF SERVICE AND AMENDED ANSWER TO APPLICATION (only pertinent portions are printed)

Page of Record

21

AMENDED ANSWER TO APPLICATION

File No. E 79933-1

Leo Thomas Kopp — Applicant

vs.

E. E. McCartin — Respondent

* * *

11. State exactly what matters are in dispute between you and the applicant, and your reason for denying liability as claimed. (If any statements are later found to be incorrect an amended answer may be filed)

As a special defense it is alleged:

1. That applicant and respondent are and at all times material to this case were residents of the State of Illinois.

2. That the contract of employment pursuant to which applicant was performing services when he was injured was entered into in the State of Illinois and was an Illinois contract and that applicant's employment in the State of Wisconsin was a temporary employment.

22

3. That at the time applicant was injured, the parties were subject to the Illinois Workmen's Compensation Act.

4. That on or about the 3rd day of November, 1943, applicant, Leo Thomas Kopp, and respondent, E. E. McCartin, entered into a settlement contract by the terms of which respondent offered and applicant accepted the sum of $2,112.00 in full

Page of Record

and final settlement of any and all claims of every nature that applicant then had or might thereafter have on account of and arising out of the injury referred to in the application filed herein.

5. That the matter of the approval of said petition for settlement contract duly came on for hearing before the Industrial Commission of Illinois on the 3rd day of December, 1943, at which time applicant also filed a petition praying that the amount due him under the Illinois Workmen's Compensation Act be paid in a lump sum. That applicant was present in person at said hearing and that on the 3rd day of December, 1943, said settlement was approved by the Industrial Commission of Illinois and an order entered by said Industrial Commission providing that the compensation due applicant under the Illinois Workmen's Compensation Act be paid in a lump sum of $2,112.00, as prayed in said petition, in accordance with the provisions of Section 9 of the Illinois Workmen's Compensation Act.

6. That said sum of $2,112.00 has been paid to and accepted by applicant.

7. That the time for reviewing said approval of said settlement contract by either petition or by suit by certiorari has expired and that it is provided by Section 19 (h) of the Illinois Workmen's Compensation Act that when compensation which is payable in accordance with an award or settlement contract approved by the Industrial Com-

Page of Record

mission is ordered paid in a lump sum by the Commission, no review shall be had.

8. That it is provided by Section 6 of the Illinois Workmen's Compensation Act that no common law or statutory right to recover damages for injury or death sustained by an employee while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of said act or anyone otherwise entitled to recover damages for such injury.

9. That it is the law of the State of Illinois as established by the statutes of said state and by the decisions of its highest courts:

(a) That a settlement contract which has been approved by the Illinois Industrial Commission is in legal effect an award and is final and conclusive and res judicata.

(b) That a lump sum order is final and conclusive and res judicata.

23 (c) That an award of compensation in another state bars an award in Illinois for the same injury.

10. That applicant's right to compensation for the injuries referred to in his application is confined to that permitted by the Illinois Workmen's Compensation Act and that he is not entitled to compensation under and has no rights under the Wisconsin Workmen's Compensation Act and the Industrial Commission of Wisconsin has no jurisdiction of this case.

Page of Record

11. That under the full faith and credit clause, Art. IV, Sec. 1, of the Constitution of the United States, applicant's petition for compensation under the Wisconsin Workmen's Compensation Act is barred as res judicata by the payment under the Illinois Workmen's Compensation Act, by the approval of the settlement contract in Illinois and by the lump sum settlement order entered by the Illinois Industrial Commission.

E. E. McCARTIN AND
CONTINENTAL CASUALTY COMPANY

[signed] By Wilkie Toebaas Hart & Jackman
Their Attorneys

53-60 FINDINGS AND INTERLOCUTORY AWARD OF EXAMINER FLINT (dated April 18, 1944) (omitting formal parts)

53 This matter is pending before the Commission upon application by the employe for an order or award under the Workmen's Compensation Act of Wisconsin for an injury sustained by him in this state. Issue was joined by an amended answer denying jurisdiction under the Workmen's Compensation Act of Wisconsin as to the injury in question, and alleging that under the full faith and credit clause of the Federal Constitution proceedings under the Wisconsin Act are barred by a previous settlement made under the Workmen's Compensation Act of Illinois.

Page of Record

Hearing was held at Beloit, Wis. on February 24, 1944.

APPEARANCES: Applicant in person; respondent and insurer by Wilkie, Toebaas, Hart & Jackman, appearing by Mr. Hart and by Mr. John H. Page, their attorneys.

The Attorney General also makes claim in the matter for contribution to the state fund under the provisions of Sec. 102.59 Wis. Stats., submitting said claim upon the testimony taken.

It is undisputed that the applicant sustained personal injury, proximately caused by accident, in the employ of respondent on May 5, 1943; that the accident causing the injury arose out of said 54 employment; that at the time of the injury the applicant was performing service growing out of and incidental to said employment; that the respondent was an employer subject to the provisions of the Workmen's Compensation Act of Wisconsin and was insured under said act by Continental Casualty Company; that at the time of the injury the applicant was 46 years of age; that his average weekly earnings were $64.00; that respondent had due notice of the injury on the day of its occurrence; that as a result of the injury the applicant was temporarily totally disabled from the date of the injury to May 24, 1943, exclusive; that as a further result he has sustained a trau-

Page of Record

matic cataract of the left eye; that he has been provided by the respondent and insurer with certain treatment for the cure and relief of the injury; and that he has been paid no compensation under the provisions of the Wisconsin Act, but has been paid the sum of $2,139.66 under the terms of a settlement contract made under the provisions of the Illinois Act, covering both temporary disability, and total and permanent loss of sight of the left eye. No claim is made that the injury was intentionally self-inflicted. While no medical testimony was presented, it appears to be undisputed that the applicant, at the time of the hearing, had total impairment of his left eye for industrial use; that no removal of the cataract had been attempted; and that the ultimate impairment of vision, if such removal were attempted, is unknown.

Upon facts and for reasons stated in the accompanying memorandum the examiner finds and concludes that the applicant was an employe subject to the provisions of the workmen's compensation act of Wisconsin; that the injury comes within the jurisdiction of the Wisconsin Act; and that an award under that act is not barred by the proceedings in Illinois.

55 The testimony discloses a disbursement by the applicant of $15.00 for glasses to aid the vision of the fellow eye. Whether they were reasonably required by the injury is not disclosed by the present record, and jurisdiction is expressly reserved with

Page of Record

reference to liability for this item. Under the Wisconsin Act, were the cataract successfully removed by operation, there would remain a minimum permanent disability of 62½% as compared with total impairment of the left eye for industrial use. An interlocutory award will be entered on this basis, reserving the questions of further treatment and of determination of further temporary, and of the exact extent of permanent, disability. The question of payment to the state fund must also be reserved until determination of the permanent impairment of vision.

It is computed that for the temporary disability heretofore sustained the applicant is entitled to indemnity at the rate of $21 per week of 2½ weeks, or in the sum of $52.50; that for said minimum permanent impairment he is entitled to indemnity at said rate for 156.25 weeks, or in the sum of $3,281.25; that the indemnity heretofore paid covers all indemnity accruing to April 15, 1945; and that there remains to accrue thereafter the sum of $1,194.09, normally payable at the rate of $91.00 per month, commencing with May 15, 1945.

NOW, THEREFORE, pending a final determination of the matter, this

INTERLOCUTORY AWARD

That respondent, E. E. McCartin, and his insurer, Continental Casualty Company, shall on the

Page of Record

15th day of May, 1945, and the 15th day of each month thereafter pay to the applicant, Leo Thomas Kopp, Ninety-One Dollars ($91.00) until the sum
56 of One Thousand One Hundred Ninety-Four and Nine One-Hundredths Dollars ($1,194.09) shall have been so paid, or until a different method of payment be provided.

* * *

57 MEMORANDUM

LEO THOMAS KOPP VS E. E. MCCARTIN

The applicant and respondent were both residents of Illinois when they entered into their contract of employment, and so remained to the time of the injury. The contract was made in Illinois. It contemplated, first a brief period of work in Illinois, to be followed by work in Wisconsin. The applicant had been engaged upon this work in Wisconsin for some ten months to the time of the injury, and the injury occurred in Wisconsin. It was caused by a flying particle of steel from his hammer or chisel penetrating the left eyeball.

On June 7, 1943 the applicant filed his application for relief under the workmen's compensation act of Wisconsin. The respondent and insurer denied liability on the ground that Illinois had exclusive jurisdiction in the matter; and on July 20, 1943 the applicant also filed application for adjust-

Page of Record

ment with the Illinois Commission. It is noted that under the Illinois Act proceedings for compensation are barred unless claim for compensation is made within six months from the accident, and, if no compensation has been paid, unless application for compensation is filed with the Illinois Commission within one year, Sec. 24 (Exh. 7).

No compensation for disability having been paid under either Act, the Wisconsin Commission advised the parties that under Wisconsin law the applicant could proceed under the Illinois Act and thereafter proceed under the Wisconsin Act, it being contemplated that the benefits in Wisconsin would be higher, and that in case a Wisconsin award were so issued credit would be given upon it for any payments made under the Illinois Act. The Commission urged that the employe be not prejudiced by having to wait while the question of jurisdiction should be considered, when it seemed clear that he would be entitled, as a minimum, to the Illinois benefits. The insurer replied that with this assurance of credit for any payments it might make in Illinois, it was proceeding to pay compensation under the Illinois Act.

58

On November 29, 1943 the parties filed with the Illinois Commission a settlement contract evidencing settlement of all claims for the injury by virtue of the Workmen's Compensation Act of Illinois and containing the following clause: "This settlement does not affect any rights that applicant

Page of Record

may have under the Workmen's Compensation Act of the State of Wisconsin." Petition for payment in a lump sum was filed the same day as the contract. Following hearing before the Illinois Commission on December 3, 1943, in the course of which attention was called to the reservation of rights in Wisconsin, the settlement contract and petition for payment in lump were endorsed approved, by a member of the Commission, on that date. Payment was made on December 7, 1943, in the amount of the settlement contract for permanent disability plus the compensation for temporary disability, a total of $2,139.66. Thereafter, on January 10, 1944, a formal order was entered by the Illinois Commission directing payment of the lump sum for permanent disability, without commutation to its present value. The circumstances of the entry of this later order, after payment was in fact made, are not disclosed.

In the meantime, on December 20, 1943, the Federal Supreme Court handed down its decision in the case of Magnolia Petroleum Company vs Hunt, holding that where a compensation claim had reached the point of final award in one state having jurisdiction of the injury, and the final award, under the law of that state, has the effect of a final judgment, it becomes res judicata as to compensation for the injury in question, and under the full faith and credit clause bars any later or further recovery under the compensation act of

Page of Record

another state having jurisdiction of the injury. Thereafter, the amended answer was filed in this proceeding, setting up this bar.

59 The Magnolia case upsets the well-settled conception of the law heretofore applying in this state to rights of recovery of compensation for an injury sustained under circumstances resulting in the compensation acts of more than one state having jurisdiction. Doubtless the race will now be on, between some employers (and insurers) and their injured employes, with the employers having a running start because of their superior knowledge of the law and of which state, having jurisdiction, has the lower benefits for the injury in question. In fact, the average employe will probably not even get started before the race is over by the employer reaching the finish-line of a final award in the state of the lower benefits.

However, there was no such race in regard to this injury. The parties proceeded in Illinois with the mutual expectation of later proceedings in Wisconsin. Rights under the Wisconsin Act were expressly reserved in the Illinois settlement contract. That agreement is in legal effect an award. Hartford Accident & Indemnity Co., vs Ind. Comm, 320 Ill. 544 (Exh 10); Mickelson vs Ind. Comm., 375 Ill. 462 (Exh 10). No reason is perceived why the reservation of rights in Wisconsin should not be effective; and in the examiner's

Page of Record

opinion it takes this case out from the rule in the Magnolia case.

While, in the examiner's opinion, the foregoing disposes of any bar of the full faith and credit clause, it appears questionable whether a mere award of the Illinois Commission has the effect of a final judgment and is res judicata. No express provision going that far is found in the Illinois enactments proved. While two of the cases included in Exh. 10 refer to awards as being res judicata (Stromberg Motor Device Co. vs Ind. Comm, 305 Ill. 619 and Centralia Coal Co. vs Ind. Comm., 297 Ill. 451), the holding of those cases is merely that
60 after expiration of specified times the Illinois Commission itself cannot set them aside and issue further awards. See Lange Canning Co. v Ind. Comm., 183 Wis. 583, 588; Hinrichs v. Ind. Comm., 225 Wis. 195, 197; Maryland Cas. Co. vs Ind. Comm., 230 Wis. 363, 369. Furthermore, the claim of the state fund was not, and could not be, considered in the proceedings in Illinois.

That the Wisconsin Act may have jurisdiction of the injury appears to rest upon the same facts as the jurisdiction of the Texas act in the Magnolia case. The length of time that the applicant was employed in Wisconsin, and differences in the provisions of both the Illinois and Wisconsin Acts from the provisions in the Vermont and New Hampshire acts or laws, distinguish this case from the situation presented in the case of Bradford

Page of Record

Elec. Co. v. Clapper, Admx., 286 U. S. 145. The Wisconsin Act, under its own provisions, does apply to the parties and to the injury, and notwithstanding the fact of an award in another state. Interstate Power Co. v. Ind. Comm., 203 Wis. 466; Salvation Army v. Ind. Comm., 219 Wis. 343; Val Blatz Brewing Co. vs. Ind. Comm., 201 Wis. 474, 481; Wandersee v Ind. Comm., 198 Wis. 345, 347; and other cases. Any payment of compensation made under the act of another state is to be credited against the liability under the Wisconsin Act. Interstate Power Co. v Ind. Comm., supra, at p. 478; Wis. Bridge & Iron Co. v Ind. Comm., 222 Wis. 194, 198; Salvation Army v Ind. Comm., supra, at p. 348.

The applicant, being employed in Wisconsin, by an employer subject to our Act, was an employe subject to the Act as matter of law. He could not, and did not purport to, withdraw.

74-76 ORDER OF INDUSTRIAL COMMISSION (dated May 15, 1944) (omitting formal parts)

74 Petition for review in the above matter having been presented to the Industrial Commission alleging error in the findings and order of the examiner made on April 18, 1944; and the Industrial Commission having reviewed the entire record, and particularly the testimony upon which petitioner relies in support of his contention, and hav-

Page of Record

ing reached its conclusion in respect to the matter set out in the petition:

NOW, THEREFORE, the Industrial Commission does

ORDER

That such findings and order be, and the same are hereby affirmed.

* * *

75 Re: E. E. McCartin v. Leo Thomas Kopp

MEMORANDUM

Applicant and respondent, residents of Illinois, entered into a contract of employment in Illinois contemplating a short period of work in Illinois followed by work in Wisconsin. Applicant had worked in Wisconsin for about 10 months when he was injured in this state.

On June 7, 1943, he filed application for benefits under the workmen's compensation act of Wisconsin. On July 20, 1943, he also filed application with the Illinois industrial commission,—this to protect him from the running of statutes of limitation. On November 29, 1943, the parties filed with the Illinois commission a settlement contract evidencing settlement of all claims for the injury by virtue of the workmen's compensation of Il-

Page of Record

linois. The instrument contained the following clause: "This settlement does not affect any rights that applicant may have under the workmen's compensation act of the State of Wisconsin." Petition for payment in lump sum was filed, and on January 10, 1944, a formal order was entered by the Illinois commission directing payment in lump for permanent disability. Thereafter hearing was scheduled in Wisconsin, following which the commission's examiner held that the Wisconsin commission had not been divested of jurisdiction and awarded compensation for applicant's loss, with due credit for the amount which had been paid pursuant to the settlement contract made under the Illinois compensation act.

Respondent contends that the United States Supreme Court holding in the case of *Magnolia Petroleum Co. v. Hunt* precludes the Wisconsin commission from assuming jurisdiction. In the Magnolia Petroleum case the holding was that
76 where a compensation claim had reached the point of final award in one state having jurisdiction of the injury, and the final award under the law of that state has the effect of a final judgment, it becomes res judicata as to compensation for the injury in question, and that under the full faith and credit clause later recovery is barred under the compensation act of another state also having original jurisdiction of the injury.

Page of Record

The examiner concluded that in view of the mutual expectation of later proceedings in Wisconsin as evidenced by the clause in the settlement contract made in Illinois, rights under the Wisconsin act were expressly reserved, and that the express agreement and understanding of the parties is to be given effect, thus taking the case out from the rule in the Magnolia case.

The commission agrees with its examiner. The Illinois award, which was made in conformance with the agreement of the parties, was not res judicata for the reason that the parties understood and agreed that applicant was not to be foreclosed by the subsequent Illinois award but was to have his right to proceed under the Wisconsin act for additional benefits. To contend that the clause in question had no effect because applicant, by settling under the Illinois act, closed out his entire claim, would be to overlook the clear and unequivocal intention and agreement of the parties.

The commission further agrees with the examiner that regardless of the agreement there is serious question as to whether a mere award of the Illinois commission has the effect of a final judgment and thus becomes res judicata.

The examiner has admirably outlined reasons for his conclusion, with all of which the commission finds itself in full agreement.

Page of Record

112 ORIGINAL LETTER FROM MORTIMER LEVITAN, ASSISTANT ATTORNEY GENERAL, TO MR. A. T. FLINT, EXAMINER FOR INDUSTRIAL COMMISSION, DATED MARCH 9, 1944 (omitting formal parts)

Re: *Leo Thos. Kopp v. E. E. McCartin*
E 79933-1

This is to acknowledge your letter of February 29 in regard to the above case, together with a synopsis of the testimony taken.

This is to inform you that I am making a claim on behalf of the state fund under the provisions of sec. 102.59, Stats. The testimony already taken in this case may be considered as applying to the claim made on behalf of the State of Wisconsin.

I am sending a copy of this letter to Lawrence E. Hart, 111 South Hamilton Street, Madison, attorney for the respondents, so that he may be advised of this claim.

115-178 TESTIMONY

(Only testimony pertaining to the jurisdictional question has been abstracted.)

118 It was admitted that Leo Thomas Kopp apparently sustained personal injury on May 5, 1943, while in the employ of E. E. McCartin while performing services growing out of and incidental to

119 the employment, and that the injury was caused

Page of Record

120 by accident; that Mr. McCartin was subject to the Wisconsin compensation act; that $2 139.66 compensation and $216.05 medical had been paid under the Illinois act. * * *

124 LEO THOMAS KOPP, called as a witness in his own behalf, testified:

EXAMINATION BY EXAMINER:

My name is Leo Thomas Kopp and I am the
125 applicant in this matter. My present mail address is Martin Avenue, Route Number One, Rockford, Illinois. I am the one who got hurt on May 5, 1943, while working for E. E. McCartin. I was born on December 25, 1896, and at the time of my injury was 46 years old. * * * My occupation in the employ of Mr. McCartin was called either
126 brick mason or bricklayer. I was repairing some work when I got hurt; we had to chisel mortar out of some of the joints in cement blocks and I struck the chisel with my hammer, and a piece of steel flew off the hammer, either the hammer or
127 chisel, and penetrated my left eye. * * * At the
128 time of the injury I was working at Beloit, Wisconsin, on the housing project, general mason work. I would say it was the northeast part of Beloit that I was working, I am not sure of the direction. I am positive that it was on the Wisconsin side. I had been working here in Wiscon-

Page of Record

sin I think about ten months continuously before the injury, and always for Mr. McCartin and on
134 that same job. * * * I never filed any notice with
135 the Industrial Commission of Wisconsin that I did not wish to be subject to the Wisconsin compensa-
137 tion act. * * * I was a resident of Illinois at the
138 time of the injury and did my voting there. * * *

CROSS-EXAMINATION BY MR. HART:

I had worked for Mr. McCartin for some years prior to 1943. There were little periods of lay-offs in the winter especially, from maybe a week to a month or so. Those were lay-offs with the intention of going back on the job as work picked up again, it was just the slack period of the year. The original hiring or original contract of employment was entered into at Rockford, and all subsequent arrangements with reference to work that I was to do for him were made at Rockford, Illinois.
139 When I went on this job at Beloit, Wisconsin, he got in touch with me at Rockford and told me he had this job up in Wisconsin. I did some piece of work in Rockford and then came up here. So that the arrangements for the job at Beloit, Wisconsin, and the hiring was all done at Rockford, Illinois. I knew when he asked me to go to work how much I was going to receive; that's union scale, that's set. The union scale in Beloit is lower than the union scale in Rockford and he paid me the Rockford

Page of Record

140 scale, * * * I filed an application for compensation under the Illinois Act. * * *

(The following exhibits are copied into the transcript of testimony:

140-143 Resp. Ex. 1—Application for adjustment of claim (Illinois);

143-146 Resp. Ex. 2—Settlement contract;

146-149 Resp. Ex. 3—Petition for lump sum;

149-150 Resp. Ex. 4—Receipt on account of partial compensation;

150-152 Resp. Ex. 5—Final report and settlement receipt.

The original exhibits are on record pages 179 to 186, inclusive, and are printed on pages 148-160, this appendix).

152 LEO THOMAS KOPP, recalled for further cross-examination, testified:

CROSS-EXAMINATION BY MR. HART:

* * *

The document that you are showing me that has been marked Resp. Ex. 1 is a copy of the application which I filed with the Illinois Industrial Commission. It is in my handwriting and bears my signature at the end. Later I entered into a settlement contract which was filed with the Illinois Industrial Commission. Resp. Ex. 2 which you are showing me is a copy of the settlement

Page of Record

153 contract that I entered into, and that also bears my signature. Then I had a hearing before the Industrial Commission of Illinois at Chicago, and at that time I asked to have the compensation provided for in the settlement contract paid to me in a lump sum, and filed a petition for the purpose of obtaining payment in lump sum. Resp. Ex. 3. is a copy of the petition for lump sum that I filed with the Illinois Industrial Commission and that also bears my signature. It is a fact that the compensation provided for in the settlement contract has been paid to me. Resp. Ex. 4 which you are showing me is a receipt bearing my signature; that receipt, Resp. Ex. 4, is for $27.66 to cover only the period or the compensation due for temporary total disability. Resp. Ex. 5 which you are showing me is a receipt for compensation bearing my signature. That is for one and four-sevenths weeks for
154 temporary total disability in the amount of $27.66 and then for one hundred twenty weeks for 100 per cent loss of use of the left eye, $2,112, and shows payment of $216.05 for hospital and medical services. (Exs. 1 to 5, both inclusive, received.)

I don't think you would call it a hearing that I had before the Illinois Industrial Commission at Chicago, there was a final settlement there. There was a proceeding there at which I testified; I was asked some questions and made answers; that was held on December 3, 1943, at the office of the In-
155 dustrial Commission of Illinois in Chicago. * * *

Page of Record

I want to know whether you remember being asked these questions and making these answers:

* * *

"THE COMMISSIONER: The reason I am asking you is this I have before me a Settle-
156 ment Contract and a Lump Sum Petition and ordinarily in these kind of cases we do not like to close them out. I want you to completely understand this.

A I have had quite a bit of time to think it over.

THE COMMISSIONER: I want you to completely understand what your rights are so that we can have the record clear, so we can feel safe in taking this action knowing that you understa id it. That is my duty.

A Here is my position now, even the work I am doing now I have to go out and get a job that is common work and it does not pay me half what I worked for before. My scale was $1.60, I work for 74 cents now. I find that is kind of dangerous for me.

THE COMMISSIONER: Unfortunately under the law, under the compensation Act an eye is an eye whether it happens to a skilled artisan or whether it happens to a common laborer and although it works injustices in many cases there is very little that we can do about it except to administer and interpret the Workmens Compensation Act.

Page of Record

A The reason I want a lump sum settlement because finding it so difficult to do so much work, I have a little property in addition to this, I could sell that and buy a little acreage.

THE COMMISSIONER: You are intelligent. I will approve the Lump Sum Settlement Petition if you want it but I just want you to understand it is a full settlement and it is final, you cannot make claim—

A I have thought that over—

Q In the future as against E. E. McCartin under the provisions of the Compensation Act for the injuries you sustained on May 5, 1943, for that injury to the left eye. In other words
157 this completely closes out your case so far as any medical, surgical or hospital expense, or as far as any additional compensation is concerned, you understand that?

A Well, does that—I do not know whether you know this. When this injury happened to me it was reported in Wisconsin.

THE COMMISSIONER: If you are concerned about the Workmen's Compensation Act in Wisconsin they have a provision in there this Settlement does not affect any rights the Applicant may have under the Compensation Act of the State of Wisconsin.

* * *

I do not know what it might mean, what your rights are in the State of Wisconsin—I do not

Page of Record

know whether the Wisconsin Act provides for any increase where it has been already closed out in another state. I do not know but that provision is in there. What it is worth I am in no position to advise you. I sit only as a member of the Industrial Commission of the State of Illinois. I do not know what the Wisconsin Act is. I do not know what rights you have under the Wisconsin Act, if any. I can't say you will be protected there, I do not know. Do you understand this thoroughly. Is there anything you do not understand you think I could advise you on?

A I have been through this matter for the last six months. I have thought it over thoroughly. I would very much appreciate it if you would give me a lump sum. I will take chances on Wisconsin.

THE COMMISSIONER: I will allow you a
158 lump sum since you understand it and you know what you are doing.

A I do.

Q Ordinarily we don't.

A I think I do anyhow. I have thought it over everyway."

BY MR. HART:

I remember being asked those questions and making those answers. My answers were true.

Page of Record

* * * The Illinois Commission approved that settlement contract and approved payment of that $2,112 to me. They also entered an order approving the making of a lump sum payment to me. I didn't file any petition after that with the Illinois Industrial Commission asking them to review that action, nor did I commence any action in any court of Illinois in any form for the purpose of
159 reviewing either one of those orders. At the time I signed this receipt marked Exhibit 5 I was paid this $2,139.66, and that was the amount that the lump sum order that was entered at Illinois provided be paid to me. * * *

EXAMINATION BY THE EXAMINER:

When I said that arrangements were made in Rockford for work to be done in Beloit, I refer to the arrangements, well only this, that E. E. McCartin asked me if I wanted to go to work at Beloit. I said "yes," so I went to work there. Prior to going up here, he said, "I have got a little job I want done first at Rockford, Illinois." I done that first and from there I came up to Beloit and began work up here. I am not positive whether I was working for him at the time he asked me if I wanted to go to Beloit. There was a lay-off of I think
160 a week or two. I don't recall whether it was during that time he asked me; yes, I think it was. I was working for someone else when he asked me.

Page of Record

I was working for another contractor. And he told me before coming to Beloit he wanted me to do a little fireplace job in Rockford, which I did, and from there I went right to Beloit. The fireplace job took I think about seven days possibly. I had been working for some contractor since I last worked for McCartin I should say about two months, but that's merely a guess. It may be a little more or less. But, of course, I had worked for McCartin before that. I worked for him in Rockford and that work was completed and he didn't have any more work for some time, so I took this other job and while I was working for this contractor he came and asked me if I would go up to Beloit. He says, "I have about ten months work or more up there," so the job I was on was nearing completion, so I took this job with him. There is never any discussion about what I would be paid, or other arrangements, it pays the union scale. I was not paid any expenses while I was in Beloit. No, I didn't have to pay my own living expenses, we drove back and forth. He promised to pay the transportation, but it turned out to be
161 a case where we had to ride with him and sometimes we had to wait morning and evening, so we drove ourselves and paid for it ourselves. We didn't take the meals up here. We drove back and forth mornings and nights, and took our lunch with us. Generally there were several of us that came up; sometimes three would drive in a car.

Page of Record

Let's see, four or five of McCartin's men from Rockford were working on this job here in Beloit. There were others—some of them from Beloit and I believe some of them from Janesville. They were coming and going, and they were all working on McCartin's work. Some of them came from as far as Minnesota. Quite a few of them from Watertown, some of them; Janesville, Wisconsin; some from Watertown, Burlington, Wisconsin. I couldn't tell you where some of these men from Beloit, Janesville, Burlington, Watertown, Wisconsin, were hired for the job. I think they probably were all hired at Beloit, but I don't know. I was never present when any of them were hired. I probably was present, but I don't remember anything about it; didn't pay any attention to it. But
162 they were all working on that job here in Beloit on the Wisconsin side of the line. On this Exhibit 2, I referred before to this clause, which was referred to, I believe, by Mr. Hart in one of his questions, this settlement does not affect any rights that applicant may have under the workmen's compensation act of the State of Wisconsin. I signed this settlement contract and it bears my signature.

Q Can you tell us how that clause that I just read came to be in that contract?

* * *

A At my request Mr. Page inserted that in the contract.

(Question answered subject to the objection.)

Page of Record

163. Mr. Page represented the respondent and insurer; he represented respondent and insurer before the Illinois Commission too. This job in Wisconsin took approximately ten months. At the time I was hurt it was finished within I would say about a month possibly. The work we was doing was finishing touches.

RECROSS-EXAMINATION BY MR. HART:

In response to questions by the Examiner I gave some testimony about the conversation I had with Mr. McCartin about coming to Beloit to work on this job and about taking that fireplace job in Rockford first. That conversation was all at Rockford, Illinois. And the fact is that I was hired in Rockford, Illinois, for the Wisconsin job. I was never hired in Wisconsin to work for Mr. McCartin on any job, it was always in Illinois. * * *

164 * * * (Resp. Ex. 6 received in evidence) * * *,

165 which exhibit is certified copies of application for adjustment of claim, settlement contract, petition for lump sum, receipt for partial compensation and final report and settlement receipt—Industrial Commission of Illinois (not printed); (see R. pp. 187-195). * * * (Resp. Exs. 7 and 8 received in evidence.) Resp. Ex. 7 is a pamphet prepared and published by the Secretary of State of the State of Illinois, containing the entire workmen's compensation act of that state (not printed); (see R. 196). Resp. Ex. 8 is certified copies of sees. 3, 4, 5, 6, 8, 9,

Page of Record

10, 11, 13, 14, and 19 of the workmen's compensation act of the State of Illinois (not printed); (see R. 196). * * *

165-166 (Resp. Ex. 9 received in evidence.) Resp. Ex. 9 is a certified copy of transcript of testimony on December 3, 1943, at Chicago, Illinois. (The original exhibit is on record pages 197 to 210, inclusive, and is printed on pages 163-168, this appendix.)

167-168 (Resp. Ex. 10 received in evidence and copied into the transcript of testimony.) Resp. Ex. 10 is a list of Illinois cases, points and authorities (not printed); (see R. 211). * * *

* * *

170 LEO THOMAS KOPP, recalled for redirect examination, testified:

EXAMINATION BY THE EXAMINER:

Before I went ahead with this claim in Illinois I went up to Madison and saw someone in the office of the Industrial Commission of Wisconsin; I went up there when refused the $3500 offer that the Continental Casualty Company made. I went up there and talked with Mr. Nelson, in the Industrial Commission office of Wisconsin. Later I received a letter, dated October 11, 1943, from
171 Mr. Nelson. This is the copy of that letter in the

Page of Record

commission's file and is a copy of the letter received (Appl. Ex. A). I don't recall that later, after further negotiations and seeing the representative of the insurance company in Illinois, I wrote to the Commission, to Mr. Nelson. Looking at a letter dated January 9, 1944, now marked Exhibit C, in the commission's file, I recognize that as mine; it is in my handwriting. I wrote that to the Industrial Commission or Mr. Nelson, rather, of the Commission, on or about the date it bears; it bears my signature. * * *

171-172 (Appl. Exs. A, B, and C received subject to objection.)

172-173 Appl. Ex. A, copied into the transcript of testimony, is a carbon copy of a letter from Harry A. Nelson, director of workmen's compensation, to Continental Casualty Company, dated October 11, 1943.

173-174 Appl. Ex. B, copied into the transcript of testimony is an original letter from John H. Page, attorney, to the industrial commission, dated November 3, 1943.

174-175 Appl. Ex. C, copied into the transcript of testimony, an original letter from Leo T. Kopp to Mr. Harry Nelson, director of workmen's compensation, dated January 9, 1944.

(The original exhibits are on record pages 213 to 217, inclusive, and are printed on pages 168-172, this appendix.)

Page of Record

175 BY THE EXAMINER:

At present Mr. McCartin resides on North Main. I don't know the number. It is North Main, Rockford, Illinois.

176 * * *

RECROSS-EXAMINATION BY MR. HART:

Q I noticed, Mr. Kopp, that this letter addressed to Continental Casualty Company, under date of October eleventh, refers to the fact that you had consulted them. Do you remember whether you consulted the Commission just shortly before October eleventh or when it was?

A I either consulted them by letter, or I think—I don't remember that clearly.

I either consulted them by letter, or I talked with Mr. Nelson personally. Come to think of it, I talked to Mr. Nelson. That was the event I think that led up to the letter. I am quite sure this conversation I had with Mr. Nelson was just shortly before that letter of October 11, 1943, was written. I don't recall that it was probably within a few days before that. My application for adjustment of claim in Illinois is dated July 19, 1943, and this copy is stamped received by the Industrial Commission of Illinois on July 20, 1943. That is

177 the date I signed it and the date they received it.

Page of Record

BY THE EXAMINER:

It was my understanding that in case the Commission in Wisconsin should make an award credit would be given for compensation paid to me under the Illinois Act. That is the reason I proceeded in Illinois. I am willing to have Illinois get credit for what they gave me, providing I get an award in Wisconsin.

BY MR. HART:

It is a fact, that at the time I was hired for this job at Beloit, Mr. McCartin was a resident of Rockford, Illinois, and had been for a good many years before that, and in fact has been ever since then.

179-180 RESP. EX. 1—APPLICATION FOR ADJUSTMENT OF CLAIM (ILLINOIS) (only pertinent portions are printed)

179 Form 10 Non-Fatal Cases 34194-50M-11,42 24

Page of Record

STATE OF ILLINOIS

Dwight H. Green, Governor

INDUSTRIAL COMMISSION
205 W. Wacker Drive, Chicago, Ill.

FILED
Jul 20 1943
The Industrial Commission of Illinois
George R. Murphy, Secretary

APPLICATION FOR ADJUSTMENT OF CLAIM

NOTICE OF DISPUTED CLAIM AND MEMORANDUM OF NAMES AND ADDRESSES

(This form to be filed in triplicate)

Leo Thomas Kopp
Petitioner.

vs.

No. 327810

E. E. McCartin
Respondent.

The petition of the undersigned respectfully shows to this Honorable Commission the following, to-wit:

1. That on the 5th day of May, 1943, Leo Thomas Kopp was injured by reason of
(Name of person injured)
an accident arising out of and in the course of his employment by the above named E. E. McCartin; that your petitioner is
(Name of employer)
the person injured.

Page of Record

2. That a dispute has arisen with respect to the compensation to be paid for the disability resulting from such injury, and the general nature of the dispute is: Whether Illinois or Wisconsin has jurisdiction in my case.

(a) The employer denies liability for the compensation provided for in the Workmen's Compensation Act.

(b) A dispute exists concerning the amount and duration of the compensation payable.

* * *

180. 7. Your petitioner prays that the Industrial Commission appoint an arbitrator to make such inquiries and investigations as he shall deem necessary, and that a day be appointed by said Industrial Commission and the time and place thereof fixed, where said arbitrator may hear such proper evidence as the parties hereto may submit, and that an award and decision may be made, in conformity with the statute in such case made and provided.

The undersigned requests that all notices of proceedings in the above entitled matter be served personally, or by registered mail upon the party whose name and address follows as attorney for

Page of Record

petitioner; if no attorney's name appears, then to the name and address of the undersigned.

Dated this 19th day of July, 1943.

(Signed) Leo Thomas Kopp

Address R. R. #1 Martin Ave

Attorney for Petitioner. City Rockford, Ill.

Address

City

Telephone

181-182 RESP. EX. 2—SETTLEMENT CONTRACT (only pertinent portions are printed)

181

INDUSTRIAL COMMISSION
State of Illinois
205 West Wacker Drive
Chicago, Ill.

STATE OF ILLINOIS)
) SS.
County of Winnebago)

SETTLEMENT CONTRACT

LEO THOMAS KOPP)
Applicant,)
vs.) No.
E. E. McCARTIN)
Respondent.)

We, the undersigned, respectfully represent to the Honorable Industrial Commission:

First, that on the 5th day of May, 1943, Leo Thomas Kopp of Martin

(Name of person injured)

Page of Record

Ave., R.R. #1, Rockford, Ill. was injured
(Address of person injured) (Killed or injured)
in an accident that arose out of and while in the employment of E. E. McCartin of
(Name of employer)
973 North Main St., Rockford, Ill.
(Address of employer)

Second, that the following statement of particulars is not binding upon the parties, if the settlement is not approved:

* * *

182 Terms of settlement Respondent offers and applicant accepts the sum of Two Thousand One Hundred Twelve ($2,112.00) Dollars, representing $17.60 per week for 120 weeks, in full and final settlement of any and all claims of every nature and kind that applicant now has or may hereafter have on account of and arising out of said accident and injury, and by virtue of the provisions of the Workmen's Compensation Act of the State of Illinois. This settlement does not effect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin.

Award of arbitrator or commission has been made as follows: None.

Reasons and causes forming basis of adjustment thereof Applicant and respondent have entered into the above settlement agreement for the purpose of avoiding the expense and delay

Page of Record

which would result from litigation of the issues under the provisions of the Workmen's Compensation Act of the State of Illinois.

In consideration of the payment of the sum of $2112.00 to Leo Thomas Kopp in weekly installments in the sum of $17.60 for a period of 120 weeks commencing the 24th day of May, 1943 by E. E. McCartin, the employer, the parties hereto have agreed and do hereby agree to waive any and all provisions of the Workmen's Compensation Act, including the right of arbitration, and to settle and adjust said claim of said Leo Thomas Kopp against said E. E. McCartin, the employer, and all differences arising out of and in said cause under the terms of the Workmen's Compensation Act of Illinois and we hereby mutually join in requesting your honorable body that the foregoing waiver of the provisions of the Workmen's Compensation Act and the foregoing contract for settlement be approved and confirmed and the parties hereto be discharged from further liability upon filing proper receipts; provided, however, that this agreement may be reviewed by the Industrial Commission upon petition of either party hereto as provided by paragraph (h) of section 19 of the Workmen's Compensation Act.

Dated this 3rd day of November A. D., 1943.

Page of Record

[Signed]
Leo Thomas Kopp
Applicant

Attorney for Applicant.

Martin Ave., R.R.#1,
Rockford, Illinois
Address Telephone

Address Telephone

JOHN H. PAGE
Attorney for Respondent

E. E. MC CARTIN
Respondent

615 Rockford
Trust Bldg.
Rockford, Illinois
Address Telephone

BY: [Signed]
John H. Page
As his Attorney.

Address Telephone

973 North Main Street,
Rockford, Illinois

Page of Record

183-184 RESP. EX. 3—PETITION FOR LUMP SUM (only pertinent portions are printed)

183 Form 28 (File original only. No duplicates required.) (84095-50M-6-39) 2

State of Illinois

Henry Horner, Governor

BEFORE THE INDUSTRIAL COMMISSION OF ILLINOIS

205 W. Wacker Drive, Chicago, Ill.

PETITION FOR LUMP SUM

LEO THOMAS KOPP)
Petitioner,)
vs.) No. —
)
E. E. MC CARTIN)
Respondent.)

Now comes the petitioner herein and prays that a lump sum order may be entered in the above entitled cause:

Name LEO THOMAS KOPP
(of Injured Party)

* * *

184 Petitioner further shows that he believes it is to the best interests of the parties that compensation now due and to become due be paid in a lump sum, for the following reasons: (Set them out showing necessity for such payment, and proper anticipated use of the money, etc.)

Page of Record

Petitioner, because of the loss of sight of the eye, is unable to continue his trade as a mason and desires to go into farming as a business. He needs the lump sum settlement to acquire a small farm and equip the same.

Petitioner therefore respectfully prays that proper notices may be given to the interested parties and that a hearing may be had at some day to be fixed by your Honorable Commission, and that upon such hearing said Commission may order the commutation of the compensation to an equivalent lump sum equal to the total sum of the probable future payments capitalized at their present value upon a three per cent basis with annual rests in accordance with the provisions of the Workmen's Compensation Act.

And your petitioner will ever pray.

[Signed] Leo Thomas Kopp
Petitioner.

Martin Avenue, R.R. #1, Rockford, Illinois.
Address.

Attorney for Petitioner.
Address.

I, (or we) hereby indicate our willingness to pay the compensation hereinbefore mentioned, commuted in accordance with Section 9, of the Work-

Page of Record

men's Compensation Act, if so ordered by the Industrial Commission of Illinois.

CONTINENTAL CASUALTY COMPANY

Signed BY: John H. Page
(Employer or Insurance Co.)
Its Attorney.

Post Office Address 910 South Michigan Avenue
Chicago 5, Illinois
(Give street and number as well as city or town.)

Page of Record

185 RESP. EX. 4—RECEIPT ON ACCOUNT OF PARTIAL COMPENSATION.

Form 13 40

CONTINENTAL CASUALTY COMPANY
Chicago, Illinois
INDUSTRIAL COMMISSION
State of Illinois
205 W. Wacker Drive
Chicago, Illinois

RECEIPT ON ACCOUNT OF PARTIAL COMPENSATION

I, Leo Thomas Kopp have received of
(Name of Employee or Beneficiary)
E. E. McCartin
(Name of Employer)
the sum of Twenty Seven dollars
and sixty six cents, being the compensation due from the
sixth day of May 19 43 to the 24th day of
May 19 43

Paid For	temporary total disability	[X]
	(specific loss	[ ]
	(other partial permanent disability	[ ]
	(disfigurement	[ ]
	(temporary partial disability	[ ]
	total permanent disability	[ ]
	death	[ ]

Amount paid to date, including this payment, $ 27.66
Amount remaining due $

(Indicate by check x purpose of payment)

under provisions of the Illinois Workmen's Compensation Act, subject to review by the Industrial Commission, for accidental injuries sustained by Leo Thomas Kopp
(Name of Employee)
on the 5th day of May 19 43 while in the employ of
E. E. McCartin — Rockford, Illinois
(Name of Employer) — (City or Town)
973 North Main St.
(Street and Number)
$ 27.66 [signed] Leo Thomas Kopp
(Name of Employee or Beneficiary)
Date December 7, 19 43 R. R. #1, Rockford, Illinois
(City, Street and Number)

Form M2011

Page of Record

186 RESP. EX. 5—FINAL REPORT AND SETTLEMENT RECEIPT

STATE OF ILLINOIS—INDUSTRIAL COMMISSION
300 W. Adams St., Chicago, Ill.

FINAL REPORT AND SETTLEMENT RECEIPT
CONTINENTAL CASUALTY COMPANY
Chicago, Illinois File No.

Employer and Employee

Employer's name E. E. McCARTIN Date Dec. 7, 19 43

Office address: Street and No. 973 North Main Street, City Rockford, Ill.

Name of Injured. LEO THOMAS KOPP

Address: Street and No. R. R. #1, Martin Ave. City Rockford, Ill.

Date of injury May 5, 1943

Last day employee worked May 5, 1943

Average weekly wages $ 64.00

Percentage of weekly wages maximum

Rate of compensation, per week $ 17.60

Days worked between date of injury and date employee returned to work none

Last day of disability May 23, 1943

Last day on which employee was disabled, not day on which employee did or could return to work.)

Period of disability from date of accident: two weeks four days.

BASIS OF SETTLEMENT	Amount Paid	
1 4/7 Weeks for temporary total disability	$27	66
Weeks for specific loss of (Arm, foot, 1st phalange of 2nd finger, etc.)		
120 Weeks for 100% loss of use of left eye	$2112	00
Weeks for disfigurement to (Head, face or hands)		
Weeks for permanent partial disability		
Weeks for permanent total disability		
Weeks for death		
Weeks for temporary partial disability		
TOTAL	$2139	66
Hospital and Medical Services	216	05
Funeral Expenses		

ARBITRATION PROCEEDINGS

Was there an arbitration? Commission number Was there a review?

Was there a settlement contract? Yes Commission number 327810

Was there a lump sum settlement? Yes Commission number 327810

Gross amt. of lump sum? $ 2112.00 Commutation deducted? $ none Net $ 2112.00

Page of Record

FINAL RECEIPT

I, Leo Thomas Kopp
(Name of employee, personal representative or beneficiary)
Have received of E. E. McCARTIN
(Name of employer)
the sum of ($2,112.00) Two Thousand One Hundred Twelve dollars and no cents
making in all, with the weekly payments already received by me, the Total Sum
of ($2,139.66) Two Thousand One Hundred Thirty Nine dollars and sixty six cents
cents ($2,139.66) in full settlement of compensation under the provisions
of the Illinois Workmen's Compensation Act, for injuries received by
Leo Thomas Kopp on or about the 5th day of May 19 43
(Name of employee)
while in the employ of E. E. McCartin, 973 North Main St., Rockford, Illinois
(Name of employer, city or town, street and number)
subject to review by the INDUSTRIAL COMMISSION.
Witness my hand this 7th day of December 19 43

[signed] Leo Thomas Kopp
(Signature of employee, personal representative or beneficiary)

Witness: [signed] John H. Page Address R. R. #1, Rockford, Illinois
(Street and number, city or town)

Form 85 (This form should be used only when payments have been completed. Every question which applies must be answered or the report cannot be accepted for filing by the Industrial Commission.)

Page of Record

187-194 RESP. EX. 6—APPLICATION FOR ADJUSTMENT OF CLAIM (ILLINOIS), PETITION FOR LUMP SUM, SETTLEMENT CONTRACT, LUMP SUM SETTLEMENT ORDER, AND CERTIFICATE OF SECRETARY OF INDUSTRIAL COMMISSION OF STATE OF ILLINOIS. (Application for adjustment of claim (Illinois), settlement contract, and petition for lump sum are duplicates of Resp. Exs. 1, 2, and 3 respectively, which exhibits are printed on pages 148-157, this appendix. The lump sum settlement order is printed below.)

193 Form 30 (7007-30M-10-41) 240

INDUSTRIAL COMMISSION OF ILLINOIS
205 West Wacker Drive
Chicago, Ill.

Lump Sum Settlement Order

Leo Thomas Kopp)
Petitioner,)
)
VS.) No. 327810
)
E. E. McCartin)
Respondent.)

To Petitioner, Leo Thomas Kopp, Martin Avenue, R. R. # 1 Rockford, Ill.

To Respondent, thru—John H. Page, 615 Rockford Trust Bldg., Rockford, Ill.

Page of Record

Petition for a lump sum settlement under the provisions of Section 9 of the Workmen's Compensation Act having been filed herein on the 29th day of November ,19 43, and said matter now coming on to be heard, upon proper notice to the interested parties, and a proper showing having been made, it appears to the Commission to be to the best interest of the parties that compensation herein be paid in a lump sum.

IT IS THEREFORE ORDERED BY THE COMMISSION that the compensation herein be paid in a lump sum of Two Thousand One Hundred Twelve & No 100 Dollars ($2112.00), as prayed in said petition, in accordance with the provisions of said Section 9 of the Workmen's Compensation Act.

Dated at Chicago, Illinois, this 10th day of January , 19 44.

(S E A L)

Wm. John Granata
Elmer Schofield
John Moulin

INDUSTRIAL COMMISSION OF ILLINOIS

ATTEST:

[signed] George R. Murphy
Secretary.

Page of Record

196 RESP. EX. 7—PAMPHLET ENTITLED "LAWS RELATING TO LABOR AND EMPLOYMENT," STATE OF ILLINOIS (not printed)

196 RESP. EX. 8—CERTIFIED PHOTOSTATIC COPIES OF SECS. 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, AND 19 OF ILLINOIS COMPENSATION ACT (not printed)

197-209 RESP. EX. 9—CERTIFIED COPY OF STENOGRAPHIC REPORT OF PROCEEDINGS HAD ON SETTLEMENT CONTRACT AND LUMP SUM PETITION (only pertinent portions are printed)

197 I, A. J. FLYNN, Do Hereby Certify, that I am one of the Official Court Reporters employed by the INDUSTRIAL COMMISSION OF ILLINOIS, that I took down in shorthand the proceedings had in the matter of Leo Thomas Kopp vs. E. E. McCartin, Industrial Commission Case No. 327 310, and that the foregoing is a true and correct transcript of my notes taken in said matter.

[signed] A. J. Flynn
Official Court Reporter
Industrial Commission of Illinois.
205 West Wacker Drive, Chicago, Ill.

Dated December 3, 1943, at Chicago, Illinois.

* * *

Page of Record

206 LEO T. KOPP, the Petitioner herein, having been first duly sworn was examined and testified as follows:

* * *

THE COMMISSIONER: State your name, please.

THE WITNESS: Leo Thomas Kopp.

BY MR. KANE:

Q Where do you live? A Martin Avenue, Route 2, Rockford, Illinois.

Q Do you live in a rented home or your own home?

A My own.

Q How long have you lived in Rockford?

A I have lived in Rockford for eighteen years.

Q You never left Rockford so far as abandoning Rockford as your home, as your town, for the last eighteen years it has been your home?

A With the exception of seven months I was out of town.

Q Do you know Mr. McCartin? A Yes, sir.

Q How long have you known Mr. McCartin?

A I have known him and worked for him seven years.

Q The first time you started to work for him where did he hire you?

201 A Rockford, Illinois.

Q Did he any time hire you any other place outside of Rockford?

Page of Record

A No, sir.

Q Wherever you did any work you were hired in Rockford?

A Yes, sir.

Q Did you work for him outside of Rockford?

A Yes, sir.

Q All the hiring was done in Rockford?

A Yes, sir.

* * *

Q Will you tell the Commissioner what happened to you on the 5th day of May, 1943.

A I was repairing some work we done.

Q Where at? A At Beloit, Wisconsin. * * *

* * *

Q And the work you did in Beloit, your were also
202 hired in Rockford to do that job?

A Yes, sir.

* * *

204 Q You had your understanding with the employer what you were going to get from the insurance company?

A Yes, sir.

206 THE COMMISSIONER: The reason I am asking
207 you is this I have before me a Settlement Contract and a Lump Sum Petition and ordinarily in these kind of cases we do not like to close them out. I want you to completely understand this.

A I have had quite a bit of time to think it over.

Page of Record

THE COMMISSIONER: I want you to completely understand what your rights are so that we can have the record clear, so we can feel safe in taking this action knowing that you understand it. That is my duty.

A Here is my position now, even the work I am doing now I have to go out and get a job that is common work and it does not pay me half what I worked for before. My scale was $1.60, I work for 74 cents now. I find that is kind of dangerous for me.

* * *

A The reason I want a lump sum settlement because finding it so difficult to do so much work, I have a little property in addition to this, I could
208 sell that and buy a little acreage.

THE COMMISSIONER: You are intelligent. I will approve the Lump Sum Settlement Petition if you want it but I just want you to understand it is a full settlement and it is final, you cannot make claim—

A I have thought that over—

Q In the future as against E. E. McCartin under the provisions of the Compensation Act for the injuries you sustained on May 5, 1943, for that injury to the left eye. In other words this completely closes out your case so far as any medical, surgical or hospital expense, or as far as any additional compensation is concerned, you understand that?

Page of Record

A Well, does that—I do not know whether you know this. When this injury happened to me it was reported in Wisconsin.

THE COMMISSIONER: If you are concerned about the Workmens Compensation Act in Wisconsin they have a provision in there this Settlement does not affect any rights the Applicant may have under the Compensation Act of the State of Wisconsin. I do not know what it might mean, what your rights are in the State of Wisconsin—I do not know whether the Wisconsin Act pro-
209 vides for any increase where it has been already closed out in another state, I do not know but that provision is in there. What it is worth I am in no position to advise you. I sit only as a member of the Industrial Commission of the State of Illinois. I do not know what the Wisconsin Act is. I do not know what rights you have under the Wisconsin Act, if any. I can't say you will be protected there, I do not know.

Do you understand this thoroughly. Is there anything you do not understand you think I could advise you on?

A I have been through this matter for the last six months. I have thought it over thoroughly. I would very much appreciate it if you would give me a lump sum. I will take chances on Wisconsin.

THE COMMISSIONER: I will allow you a lump sum since you understand it and you know what you are doing.

Page of Record

A I do.

Q Ordinarily we don't.

A I think I do anyhow. I have thought it over everyway.

* * *

211-212 RESP. EX. 10—POINTS AND AUTHORITIES (list of Illinois cases) (not printed)

213 APPL. EX. A—CARBON COPY OF LETTER FROM HARRY A. NELSON, DIRECTOR OF WORKMEN'S COMPENSATION, TO CONTINENTAL CASUALTY COMPANY, DATED OCTOBER 11, 1943 (omitting formal parts)

Mr. Kopp has consulted us concerning possible settlement of his claim because of injury on May 5, 1943, at Beloit. He states that injury has resulted in total loss of vision of one eye. He also informs us that no compensation has been paid. There appears to be question as to whether his claim is compensable under the Illinois or Wisconsin law, or both laws. We have informed him that under supreme court holdings in Wisconsin he is entitled to proceed under the Illinois act and thereafter claim compensation under the Wisconsin act with credit to be given for the amount paid to him under the provisions of the Illinois act, regardless of whether or not he may later make claim under the Wisconsin act. It does not seem to us that Mr. Kopp should be prejudiced by having to wait for some period of time while the question of jurisdiction is being considered, although it seems clear that as a minimum com-

Page of Record

pensation benefits will accrue in the amount which the Illinois act provides.

Please let us hear from you.

We are sending copy of this letter to Mr. Kopp for his information.

214-215 APPL. EX. B—ORIGINAL LETTER FROM JOHN H. PAGE, ATTORNEY, TO THE INDUSTRIAL COMMISSION, DATED NOVEMBER 3, 1943 (omitting formal parts)

214 Your letter of October 11, 1943 to the Milwaukee office of Continental Casualty Company has been referred to me for reply by the Home Office of the company.

As you state in your letter, there appears to be a question as to whether Kopp's claim is compensable under the Illinois or Wisconsin law or both laws. It has been our thought that since McCartin and Kopp are and have been residents of Rockford, Illinois for many years and the contract of employment was entered into at Rockford, Illinois, the Illinois Workmen's Compensation Act governs the right to and the amount of compensation payable to Kopp. With Kopp a resident of Illinois, voting here, subject to the Unemployment Compensation Laws of this state, the interest of Illinois in Kopp's welfare, in whether he may become a pauper and a charge upon the community is far superior to any interest Wisconsin might have in him. Further, the Supreme Court of Il-

Page of Record

linois has consistently held that where the employee and the employer are non-residents and the contract of employment is entered into in the state of residence of the employer and employee, the Workmen's Compensation Act of that state controls and not the Illinois Workmen's Compensation Act even though the accident and injury occured in Illinois.

We have been desirous of effecting a compromise rather than engage in drawn out litigation of a question involving a conflict of laws. Since you do not feel that you are able to approve a compromise, that is out of the question.

215 There has been some question in our minds as to what procedure to follow under the Illinois Workmen's Compensation Act, not wishing to pay one award under the Illinois Act and another under the Wisconsin Act for the same injury. We note your advices in your letter of October 11, 1943 that under the Supreme Court holdings in Wisconsin, Kopp is entitled to proceed under the Illinois Act and thereafter claim compensation under the Wisconsin Act with credit to be given for the amount paid him under the provisions of the Illinois Act. We under stand from your advices that if we make payments to Kopp under the Illinois Workmen's Compensation Act, for the loss of his left eye, you, in the event you make an award to Kopp under the Wisconsin Act for the same injury, will credit your award with the

Page of Record

amount paid to Kopp under the provisions of the Illinois Act. With this understanding, we are proceeding to pay Kopp compensation under the provisions of the Illinois Act.

216-217 APPL. EX. C—ORIGINAL LETTER FROM LEO T. KOPP TO MR. HARRY NELSON, DIRECTOR WORKMEN'S COMPENSATION, DATED JANUARY 9, 1944 (omitting formal parts)

216 The notice of cancellation of hearing scheduled for January 13th 1944, leaves me somewhat confused. Refering to your letter of October 11 - 43 to Continental Casualty Co., of which I have a copy you advised that under Supreme Court holdings in Wisconsin I would be entitled to proceed under Illinois Act, and thereafter claim compensation under Wisconsin Act, with credit given for amount paid me under Illinois Act.

Procedure was started in Illinois and on Novem-
217 ber 29 - 1943 the Illinois Industrial Commission awarded me $2,112, representing $17.60 per week for 120 weeks in a lump sum award plus 18 days temporary disability. However in the Contract under terms of settlement this claus was added at my request. "This settlement does not effect any rights that applicant may have under the Workmans Compensation act of the State of Wisconsin."

Page of Record

Kindly advise me if the settlement under Illinois act will have any effect on my rights to claim under Wisconsin act."

238-239 JUDGMENT (omitting formal parts)

238 The above entitled matter having come on for hearing, before the court without a jury, upon the return of the above named defendant, Industrial Commission of Wisconsin, Wilkie, Toebaas, Hart & Jackman by Mr. Lawrence E. Hart appearing on behalf of plaintiffs and Mortimer Levitan, Assistant Attorney General, appearing on behalf of defendants, Industrial Commission of Wisconsin and State of Wisconsin, and there being no other appearances, and the court having heard the arguments of counsel and being fully advised in the premises, and having taken the matter under advisement and having on the 7th day of November, 1945, filed its decision and directions for the entry of a judgment as hereinafter provided,

NOW THEREFORE, on motion of Wilkie, Toebaas, Hart & Jackman attorneys for plaintiffs,

IT IS ADJUDGED that defendant, Industrial Commission of Wisconsin, acted without and in excess of its powers in making and entering its order and award dated May 15, 1944, ordering E. E. McCartin, and his insurer, Continental Casualty Company, to pay a total of One Thousand One Hundred Ninety-four Dollars to Leo Thomas Kopp

Page of Record

because of injuries received by him on May 5,
239 1943, while in the employ of E. E. McCartin, and that said order and award be, and the same hereby is, set aside.

Dated at Madison, Wisconsin, this 20th day of November, 1945.

INDEX TO APPENDIX

	Record Page	Appendix Page
Admission of service and amended answer to application	21-23	116-120
Application for adjustment of claim	18	115-116
Complaint	2-5	111-113
Directions for judgment	232-236	107-111
Exhibits		
Appl. Ex. A—Carbon copy of letter from Harry A. Nelson, director of workmen's compensation, to Continental Casualty Company, dated October 11, 1943	172-173, 213	168-169
Appl. Ex. B—Original letter from John H. Page, attorney, to the industrial commission, dated November 3, 1943	173-174, 214-215	169-171
Appl. Ex. C—Original letter from Leo T. Kopp to Mr. Harry Nelson, director of workmen's compensation, dated January 9, 1944	174-175, 216-217	171-172

	Record Page	Appendix Page
Resp. Ex. 1—Application for adjustment of claim (Illinois)	140-143, 179-180	148-151
Resp. Ex. 2—Settlement contract	143-146, 181-182	151-154
Resp. Ex. 3—Petition for lump sum	146-149, 183-184	155-157
Resp. Ex. 4—Receipt on account of partial compensation	149-150, 185	158
Resp. Ex. 5—Final report and settlement receipt	150-152, 186	159-160
Resp. Ex. 6—Application for adjustment of claim (Illinois), petition for lump sum, settlement contract, lump sum settlement order, and certificate of secretary of industrial commission of State of Illinois	187-195	161-162
Resp. Ex. 7—Pamphlet entitled "Laws Relating to Labor and Employment," State of Illinois	(envelope)	196

	Record Page	Appendix Page
Resp. Ex. 8—Certified photostatic copies of secs. 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, and 19 of Illinois compensation act (envelope)	196	
Resp. Ex. 9—Certified copy of stenographic report of proceedings had on settlement contract and lump sum petition	197-209	163-168
Resp. Ex. 10—Points and authorities (list of Illinois cases)	167-168, 211-212	
Findings and interlocutory award of Examiner Flint (dated April 18, 1944)	53-60	120-129
Judgment	238-239	172-173
Order of industrial commission (dated May 15, 1944)	74-76	129-132
Original letter from Mortimer Levitan, assistant attorney general, to Mr. A. T. Flint, examiner for industrial commission	112	133
Separate answer of defendant, industrial commission of Wisconsin	7-8	113-114

	Record Page	Appendix Page
Separate answer of defendant, state of Wisconsin	11-12	114
Testimony	115-178	133-148
LEO THOMAS KOPP		
Examination by Examiner	124-138	134-135
	159-163	141-144
	170-175	145-147
	177	148
Cross-examination by Mr. Hart	138-139	135-136
	152-159	136-141
Recross-examination by Mr. Hart	163-165	144-145
	176-177	147
	177	148

[fol. 178] I, Arthur A. McLeod, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the attached printed Appendix *of the appellants, is a full and* complete copy of the printed Appendix in No. 149, August Term, 1945, in the Wisconsin Supreme Court, argued on March 15th, 1946, and of the whole thereof; and together with the balance of the record herewith certified constitutes an entire and true copy of the entire record before the Supreme Court of Wisconsin, in said cause, and of the proceedings in said cause, in this Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Madison, this 24th day of June, A. D. 1946.

Arthur A. McLeod, Clerk of Supreme Court, Wisconsin. (Seal.)

[fol. 179] Pleas before the Supreme Court of the State of Wisconsin at a term thereof begun and held at the Capitol in Madison, the seat of government of said State on the Second Tuesday, to-wit: the Fourteenth day of August, A. D. 1945.

Present: Hon. Marvin B. Rosenberry, Chief Justice; Hon. Chester A. Fowler, Hon. Oscar M. Fritz, Hon. Edward T. Fairchild, Hon. John D. Wickhem, Hon. Joseph Martin, Hon. Elmer E. Barlow, Justices.

Arthur A. McLeod, Clerk.

Be it remembered that heretofore, to-wit: on the twentieth day of December in the year of our Lord One Thousand Nine Hundred and Forty-five came into the office of the Clerk of the Supreme Court of the State of Wisconsin, the Industrial Commission of Wisconsin, Leo Thomas Kopp and State of Wisconsin, by their attorneys and filed in said Court their certain Notice of Appeal, according to the statute in such case made and provided, and also the Return to such appeal, of the Clerk of the Circuit Court of Dane County, in said State, in words and figures following, that is to say:

[fol. 180] IN THE CIRCUIT COURT OF THE STATE OF WISCONSIN FOR DANE COUNTY

Circuit Court, Dane County, Wisconsin. Dec. 1, 11.57 A. M. 1945. Myrtle L. Hansen, Clerk.

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation, Plaintiffs,

v.

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN, Defendants

NOTICE OF APPEAL

To ~~Wilkie, Tuebaas~~, Hart and Jackman, Attorneys for Plaintiffs; Myrtle L. Hansen, Clerk of Circuit Court for Dane County:

Please take notice that the undersigned, the defendants in the above entitled action, by John E. Martin, Attorney General, and Mortimer Levitan, Assistant Attorney General, and Leo Thomas Kopp, in propria persona, appeal to the Supreme Court of the State of Wisconsin, from a certain judgment entered in the above entitled action on the 20th day of November, 1945, setting aside an interlocutory award of the Industrial Commission of Wisconsin, dated May 15, 1944, ordering the plaintiffs to pay certain sums as compensation to Leo Thomas Kopp because of injuries sustained while in the employ of the plaintiff, E. E. McCartin, and reserving the questions of liability for glasses, of further treatment and of determination of further temporary, and of the exact extent of permanent, disability, and payment to the state fund, and from the whole and every part thereof.

Dated at Madison, Wisconsin, this 1st day of December, 1945.

Industrial Commission of Wisconsin, State of Wisconsin. By John E. Martin, Attorney General; Mortimer Levitan, Assistant Attorney General.

Filed Dec. 20, 1945. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

Leo Thomas Kopp, in propria persona.

[fol. 181] [Endorsed:] (Original). State of Wisconsin, Circuit Court, Dane County. E. E. McCartin, et al., Plaintiffs, v. Industrial Commission of Wisconsin, et al., De-

fendants. Notice of Appeal. Due and personal service of the within Notice of Appeal admitted this 1st day of December, 1945. Wilkie, Toebaas, Hart & Jackman, Attorney for plaintiffs, —— —— Attorney for —— ——. Service admitted this 1st day of December, 1945. Myrtle L. Hansen, Clerk. Circuit Court, Dane County, Wisconsin. Dec. 1, 11.57 A. M. 1945. Myrtle L. Hansen, Clerk. Filed Dec. 20, 1945. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

[fol. 182] And afterwards to-wit on the 15th day of March, A. D. 1946, the same being the 40th day of said term, the following proceedings were had in said cause in this Court:

DANE CIRCUIT COURT

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation, Respondents,

v.

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN, Appellants

And now at this day, came the parties herein, by their attorneys, and this cause having been argued by Mortimer Levitan, Esq., Assistant Attorney General, for the said appellants, and by Laurence E. Hart, Esq., for the said respondents, and submitted, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

[fol. 183] And afterwards, to-wit: on the 12th day of April, A. D. 1946, the same being the 44th day of said term, the judgment of this Court was rendered in words and figures follgwing, that is to say:

DANE CIRCUIT COURT

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation, Respondents,

v.

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN, Appellants

Opinion by Justice Barlow.

This cause came on to be heard on appeal from the judgment of the Circuit Court of Dane County and was argued

by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the Circuit Court of Dane County, in this cause, be, and the same is hereby, affirmed.

Justice Fritz dissents.

[fol. 184] Thereupon the opinion of the Court by Justice Barlow was filed in words and figures following, that is to say:

[fol. 185] IN THE SUPREME COURT OF THE STATE OF WISCONSIN, AUGUST TERM, 1945

No. 149

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation, Respondents,

v.

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN, Appellants

Appeal from a judgment of the Circuit Court for Dane county; Herman W. Sachtjen, Circuit Judge. Affirmed.

This is an appeal from a judgment of the Circuit Court for Dane county entered November 7, 1945, setting aside an interlocutory award of the Industrial Commission dated May 15, 1944, ordering the respondents, E. E. McCartin and Continental Casualty Company, a corporation, to pay certain sums as compensation to the appellant, Leo Thomas Kopp, because of injuries sustained by him while in the employ of respondent E. E. McCartin. The material facts will be stated in the opinion.

[fol. 186] BARLOW, J.:

This is a workman's compensation case. Leo Thomas Kopp, a resident of Illinois, was an employee of E. E. McCartin, an Illinois resident. Pursuant to a contract made in Illinois, Kopp agreed to work as a bricklayer on a building job in Beloit, Wisconsin, the job lasting about ten months, during which time Kopp drove back and forth between his home in Rockford, Illinois, and the building job in Beloit, Wisconsin. On May 5, 1943, while so employed on the Beloit job, Kopp suffered an injury to his

left eye, resulting in a traumatic cataract. Both employer and employee were subject to the Wisconsin compensation act. On June 7, 1943, Kopp filed an application for adjustment of claim with the Industrial Commission of Wisconsin, and on July 20, 1943, filed application for adjustment with the Industrial Commission of Illinois. On November 29, 1943, a settlement contract, dated November 3, 1943, was filed with the Illinois commission, and on November 29, 1943, Kopp filed with the Illinois commission a petition for lump sum payment. On December 3, 1943, the Illinois commission held a hearing on the application for lump settlement, and on that day endorsed its approval of the petition. December 7, 1943, full payment was made of compensation due under the Illinois compensation act, and on January 10, 1944, the Illinois commission issued a lump sum settlement order. The Wisconsin commission held a hearing February 24, 1944, at which time the contention was made that Wisconsin had no jurisdiction. April 18, 1944, after hearing, the examiner entered an interlocutory award holding that Wisconsin had jurisdiction, and ordering the payment of certain benefits but giving credit for the sums paid under the Illinois law, and making reservations not material here. The award of the examiner was [fol. 187] affirmed by the Industrial Commission of Wisconsin May 15, 1944, which order and award were set aside by the circuit court.

It is undisputed that both the Industrial Commission of Illinois and the Industrial Commission of Wisconsin had jurisdiction to award compensation at the time of the injury. It appears that the law of this state provides for a larger compensation than does the law of Illinois for an injury such as Kopp received.

This court held in *Interstate Power Co. v. Industrial Commission* (1931), 203 Wis. 466, 234 N. W. 889; *Salvation Army v. Industrial Commission* (1935) 219 Wis. 343, 263 N. W. 349, and *Wisconsin Bridge and Iron Co. v. Industrial Commission* (1936), 222 Wis. 194, 268 N. W. 134, that an award for compensation in another state would not preclude recovery of an award in Wisconsin; however, the amount of the award in the other state must be credited upon the Wisconsin award.

In one of these cases, *Salvation Army v. Industrial Commission*, the employer was an Illinois corporation and the employee an Illinois resident who sustained a fatal

injury in Wisconsin. The procedure approved in that case is the one that was followed here, and there would be no question about it being proper if it were not for the case of *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, decided December 20, 1943, by the Supreme Court of the United States. There the employee Hunt was employed in Louisiana by the Petroleum company in connection with the drilling of an oil well, and was sent by his employer from Louisiana to Texas, and while working there sustained an injury. Application for award was made in Texas under the workmen's compensation law of that state, and the Texas insurer began to make payments. Hunt then re- [fol. 188] turned to his home in Louisiana and notified the insurer of his intention to claim under the statute of Louisiana. Four days later, without any request from Hunt, the Texas board notified him that a hearing would be held in Texas within two and a half weeks "to determine the liability of the insurance company under the Texas Law." Hunt did not participate in that proceeding. The Texas board made an award but, before this became final, Hunt declined to accept money under it and filed suit in Louisiana under the workmen's compensation law of Louisiana. He recovered judgment for a larger amount than the Texas award, from which the Louisiana court deducted the sum he had already received from the Texas insurer. On appeal, the Supreme Court of the United States held that the full faith and credit clause, Art. IV, sec. 1, Constitution of the United States, applied to findings and awards by commissions as well as judgments and decrees of courts, and that "The Texas award, being a bar to any further recovery of compensation for respondent's injury is, by virtue of the full faith and credit clause, exclusive of his remedy under the Louisiana Act." The court then went on to say:

> "The grounds of recovery are the same in one state as in the other—the injury to the employee in the course of his employment. The whole tendency of our decisions under the full faith and credit clause is to require the plaintiff to try his whole cause of action and his whole case at one time. He cannot split up his claim and '*a fortiori*, he cannot divide the grounds of his recovery.'"

The court further stated:

"Respondent was free to pursue his remedy in either state but, having chosen to seek it in Texas, where the award was res judicata, the full faith and credit clause precludes him from again seeking a remedy in Louisiana upon the same grounds."

It is argued by appellants that the following language in [fol. 189] the settlement contract filed with the Industrial Commission of Illinois, "This settlement does not effect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin" constituted a reservation of employee's rights to additional benefits under the Wisconsin Compensation Act and that the employer should be estopped from questioning the right of the employee to proceed in Wisconsin. To sustain his contention considerable weight is given to a letter written by the Industrial Commission of Wisconsin to respondent insurance carrier on October 11, 1943, in which the commission informed respondent insurance carrier that the commission had informed claimant Knopp he could proceed under the Illinois act and thereafter claim compensation under the Wisconsin act, with credit to be given for the amount paid to him under the provisions of the Illinois act. The insurance carrier, through its attorney, replied under date of November 3, 1943, that it understood that if it (the insurance carrier) made payments to claimant under the Illinois Workmen's Compensation Act for this injury, credit would be given for these payments *in the event an award was made to Kopp under the Wisconsin Act*. There is nothing in the letters or the provision of the settlement contract filed with the Illinois commission by which the insurance carrier waived any legal rights it had or granted any additional rights to claimant. It merely agreed that, if claimant had any legal rights which he could establish in Wisconsin it was his privilege to do so. Claimant was not deceived in any way by the insurance carrier, as there is no evidence he knew anything about the letters that were exchanged between the Wisconsin commission and the insurance carrier, and on the hearing on the petition for payment of the lump sum, before the Illinois Commission [fol. 190] on December 3, 1943, claimant was informed by the commissioner in charge of the hearing that the settlement petitioned for was a full and final settlement of any

claim against his employer, McCartin, for the injury sustained to his eye on May 5, 1943. Claimant then mentioned that the accident had been reported in Wisconsin. The commissioner informed claimant that he knew nothing about his rights in Wisconsin and could not say that he would be protected there as he did not know, and asked him whether he fully understood this. Claimant then requested that the lump sum settlement be allowed and he would take his chances in Wisconsin. There can be no question that he was fully informed and was not led to believe that any rights were specifically reserved for him under the Wisconsin act.

It is claimed that the *Magnolia* case, supra, should not apply because under the Texas law an election to accept compensation in another state barred recovery in Texas while in the case under consideration there is no law barring recovery in both states. While the court stated in the *Magnolia* case that it was not required to pass on this specific question, due to the Texas law, the case was decided wholly on the effect to be given to the full faith and credit clause of the constitution, and to hold otherwise for the reason here urged would require us to disregard the language and reasoning used in the decision.

The next contention of appellants is that the award by the Industrial Commission of Illinois was an interlocutory award, because it was subject to claimant's rights under the Wisconsin act, and therefore was not final and res judicata, and for this reason this case is not ruled by the *Magnolia* case. We have heretofore pointed out in this [fol. 191] opinion that the lump sum application was approved and an order entered in full and final settlement of any claim by reason of this injury, and that the language used in the settlement contract with reference to claimant's rights under the Wisconsin act did not constitute any condition or agreement affecting the rights of the parties, so it cannot be said that the Illinois award was an interlocutory award, and no claim is made that a final award by the Industrial Commission of Illinois is not res judicata.

Consideration has been given to other questions presented in appellants' brief, but we do not feel any useful purpose will be served in further discussion, as it is considered this case is governed by the case of *Magnolia Petroleum Co. v. Hunt*, supra. State courts must conform to decisions of the United States Supreme Court, as they

are the law on all matters involving a federal question even though they overrule the established law of many state courts. The rule announced in the *Magnolia* case has been followed in the following cases: *Overcash v. Yellow Transit Co.* 352 Mo. 993, 180 S. W. 2d 678; *Butler v. Lee Bros. Trucking Co.* 178 S. W. 2d 58.

By the Court.—Judgment affirmed.

[fol. 192] And afterwards, to-wit: on the 17th day of June, A. D. 1946, the following stipulation was filed in this cause:

[fol. 193] It Is Hereby Stipulated Between the Parties, by their respective attorneys:

That in the record before the Supreme Court of the State of Wisconsin in Case No. 149, August Term, 1945, argued on the 15th day of March, 1946, the settlement contract, of which only portions are printed in the printed appendix as Resp. Ex. 2 at pp. 151-154 of said printed appendix, being pp. 181-182 of the original record certified from the lower court, contains thereon the following endorsements:

"Filed November 29, 1943. The Industrial Commission of Illinois. George R. Murphy, Secretary."

"Approved December 3, 1943. Industrial Commission of Illinois. Wm. John Granata, member."

That this stipulation may be filed with the Clerk of the Supreme Court of the State of Wisconsin and included as a part of the record to be certified to the Clerk of the Supreme Court of the United States.

Dated this 14 day of June, 1946.

Wilkie, Toebaas, Hart & Jackman, by Laurence E. Hart, Attorneys for E. E. McCartin and Continental Casualty Company, a Corporation. John E. Martin, Attorney General of the State of Wisconsin, by Mortimer Levitan, Assistant Attorney General of the State of Wisconsin. Attorneys for Industrial Commission of Wisconsin and State of Wisconsin.

[fol. 194] IN THE SUPREME COURT OF THE STATE OF WISCONSIN

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation, Respondents,

v.

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN, Appellants

I, Arthur A. McLeod, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of all the record and proceedings now on file and of record in my office with all things concerning the same in the above entitled cause, in this Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Madison, this 21st day of June, A. D. 1946.

Arthur A. McLeod, Clerk of Supreme Court, Wisconsin. (Seal.)

[fol. 195] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 270

ORDER ALLOWING CERTIORARI—Filed October 14, 1946

The petition herein for a writ of certiorari to the Supreme Court of the State of Wisconsin is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office ... U. S.
JUL 3 ...
CHARLES ELMORE ...

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 270

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, AND STATE OF WISCONSIN,
Petitioners,

vs.

E. E. McCARTIN AND CONTINENTAL CASUALTY COMPANY, A CORPORATION

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN AND BRIEF IN SUPPORT THEREOF.

JOHN E. MARTIN,
Attorney General of Wisconsin;
MORTIMER J. LEVITAN,
Assistant Attorney General of Wisconsin,
Counsel for Petitioners, Industrial Commission of Wisconsin and State of Wisconsin.

LEO THOMAS KOPP,
Petitioner.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Summary statement of the matter involved	1
This court has jurisdiction	4
The question involved	5
Reasons relied on for allowance of writ	5
Brief in support of petition for writ of certiorari	9
The opinion of the court below	9
Jurisdiction	9
Statement of the case	10
Specification of errors	10
Argument	10
Summary of argument	10
Point A—Decision in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, is inapplicable because Illinois award was based on settlement agreement expressly stating that it did not affect rights employee might have under Wisconsin Compensation Act	11
Point B—*Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, expressly states that it did not decide case where state making first award (as in present case) would allow compensation notwithstanding previous award in another state	14
Point C—Provisions in Wisconsin Compensation Act for payment of $75 into State Treasury for second injury fund in cases of specified injuries, constitute sufficient grounds for creation of exception to full faith and credit clause	15
Point D—Because of apparent departure from generally recognized rule in compensation cases, decision in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, should be re-examined and limits of application indicated	17
Conclusion	21

Table of Cases Cited

	Page
Esenwein v. *Commonwealth*, 325 U. S. 279 (1945)	17
Hartford Accident Co. v. *Indus. Com.*, 320 Ill. 544 (1926)	12
Magnolia Petroleum Co. v. *Hunt*, 320 U. S. 430,	2, 5, 6, 10, 11, 14, 15, 16, 17, 18
Severin v. *Industrial Com.*, 363 Ill. 217 (1936)	15
Industrial Comm. v. *Nordenholt Co.*, 259 U. S. 263 (1922)	5
Williams v. *North Carolina*, 325 U. S. 226 (1945)	5, 18, 19

Table of Statutes Cited

Illinois Workmen's Compensation Act (Ill. Rev. Stat., 1943, ch. 48, §§ 138-172)	4
Illinois Workmen's Compensation Act, § 5 (Ill. Rev. Stat., 1943, ch. 48, § 142)	14
Illinois Workmen's Compensation Act, § 7 (e) (Ill. Rev. Stat., 1943, ch. 48, § 144 (e))	16
Illinois Workmen's Compensation Act, § 8 (e) 20 and (f) (Ill. Rev. Stat., 1943, ch. 48, § 145 (e) 20 and (f))	16
Illinois Workmen's Compensation Act, § 9 (Ill. Rev. Stat., 1943, ch. 48, § 146)	12
Illinois Workmen's Compensation Act, § 23 (Ill. Rev. Stat., 1943, ch. 48, § 160)	12
Texas Rev. Civ. Stat., Title 130, Article 8306, § 19	14
U. S. Judicial Code, Section 237 (b) (28 U. S. C. § 344 (b))	4, 9
Wisconsin Statutes, 1043, ch. 102	4
Wisconsin Statutes, 1943, Section 102.59	16
Wisconsin Statutes, 1943, Section 102.59, Subsection (1)	16
Wisconsin Statutes, 1943, Section 102.59, Subsection (2)	16
Wisconsin Statutes, 1943, Section 102.59, Subsection (3)	16
Wisconsin Statutes, 1943, Section 102.64, Subsection (1)	16

TEXT BOOKS AND SPECIAL ARTICLES

Page

"Injury and Death Under Workmen's Compensation Laws", by Samuel B. Horovitz (1944), p. 41 19

"Reflections on Magnolia Petroleum Co. v. Hunt", by Harold Wright Holt, 30 Cornell Law Quarterly (1944), p. 160 21

"Res Judicata and the Full Faith and Credit Clause: Magnolia Petroleum Co. v. Hunt", by Elliott E. Cheatham, 44 Columbia Law Review 330, 342, 343-345 (1944) 20

Restatement of Conflict of Laws (1934), §403, American Law Institute 17

"Workmen's Compensation Award—Commonplace or Anomaly in Full Faith and Credit Pattern?" by Paul A. Wolkin, 92 U. of Pa. Law Review (1944), p. 401 21

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 270

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, AND STATE OF WISCONSIN,
Petitioners,

vs.

E. E. McCARTIN AND CONTINENTAL CASUALTY COMPANY, A CORPORATION

PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

The petition of the Industrial Commission of Wisconsin, Leo Thomas Kopp, and State of Wisconsin, respectfully shows to this Honorable Court:

A

Summary Statement of the Matter Involved

This petition is filed to obtain a review of the judgment of the Supreme Court of the State of Wisconsin, dated April 12, 1946, in the case of *E. E. McCartin and Continental Casualty Company, a Corporation, Respondents,* v.

Industrial Commission of Wisconsin, Leo Thomas Kopp, and State of Wisconsin, Appellants, holding that under the full faith and credit clause of the Federal Constitution as construed by this Court in *Magnolia Petroleum Co.* v. *Hunt,* 320 U. S. 430, an award of workmen's compensation made in Illinois (where the contract of employment had been entered into) pursuant to a settlement agreement between employee and employer which expressly stated that it was not to bar any rights that the employee might have under the Wisconsin Compensation Act, precluded all recovery under the Compensation Act of Wisconsin (where the injury occurred).

There is no dispute as to the facts. Leo Thomas Kopp (R. 134), who resided at Rockford, Illinois (R. 134, 135), had worked as a bricklayer (R. 134) in Illinois for E. E. McCartin (R. 135), a contractor who was an Illinois resident (R. 147, 148). Pursuant to a contract made in Illinois (R. 135, 141, 142, 144), Kopp agreed to work for McCartin on a building job at Beloit, Wisconsin (R. 135). The job lasted about ten months (R. 135, 142, 144), during which time Kopp drove back and forth between his home in Rockford and Beloit (R. 142). On May 5, 1943, while working for McCartin (R. 134) on the Beloit job (R. 134), Kopp suffered an injury to his left eye (R. 133, 134). It was admitted that both McCartin and Kopp were subject to the Wisconsin Compensation Act (R. 134).

On June 7, 1943, Kopp filed an application for adjustment of claim with the Wisconsin Industrial Commission (R. 115-116). On July 20, 1943, he filed an application for adjustment of claim with the Illinois Industrial Commission (R. 148-151), in which the general nature of the dispute was given as "Whether Illinois or Wisconsin has jurisdiction in my case" (R. 150). On November 29, 1943, a settlement contract, dated November 3, 1943 (R. 153), was filed

with the Illinois Commission (R. 151-154) in which it was expressly stated: "'This settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin'' (R. 152). On November 29, 1943, Kopp filed with the Illinois Commission a petition for lump sum (R. 155-157), and on December 3, 1943 (R. 137), the Illinois Commission held a hearing on said petition (R. 137-140, 163-168). On December 7, 1943, pursuant to approval endorsed on said petition, full payment was made of compensation due under the Illinois Compensation Act (R. 134, 137, 141, 159-160), and on January 10, 1944, the Illinois Industrial Commission issued a formal lump sum settlement order (R. 161-162).

Thereafter E. E. McCartin and Continental Casualty Company, by their attorneys, filed an amended answer to the application pending before the Wisconsin Industrial Commission setting forth as a special defense that under the full faith and credit clause of the Constitution of the United States proceedings under the Wisconsin Act were barred by the award and payment under the Illinois Workmen's Compensation Act (R. 117-120).

The Wisconsin Industrial Commission held a hearing on February 24, 1944 (R. 121); and on March 10, 1944, the said Commission received a letter from the Attorney General of Wisconsin making a claim for contribution to the state fund under the provisions of sec. 102.59 of the Wisconsin Statutes, 143 (R. 133). On April 18, 1944, an examiner for said Industrial Commission entered an interlocutory award ordering the payment of certain benefits, but giving credit for the sums paid under the Illinois law and making certain reservations, among them the question of payment to the state fund, until determination of the permanent impairment of vision (R. 120-129). The said

Industrial Commission affirmed the order of the examiner on May 15, 1944 (R. 129-132).

An action to review the Wisconsin Industrial Commission's order was commenced in the Circuit Court for Dane County, Wisconsin (R. 111-114), and that Court on November 20, 1945, entered a judgment setting aside the order and award of the Industrial Commission (R. 101-111, 172-173). On appeal therefrom by the Industrial Commission of Wisconsin, Leo Thomas Kopp, and State of Wisconsin, in accordance with the Wisconsin Statutes, the Supreme Court of the State of Wisconsin on April 12, 1946, rendered its decision and judgment affirming the judgment of said Circuit Court. The opinion of the Supreme Court of the State of Wisconsin appears in 248 Wis. 570, and is set forth in full in the record (R. 181-186).

B

This Court Has Jurisdiction

This Court has jurisdiction under sec. 237 (b) of the Federal Judicial Code (28 U. S. C. § 344 (b)), because a final judgment has been rendered by the Supreme Court of Wisconsin, the highest court of the state in which a decision can be had, and because a right under the Constitution of the United States is claimed by the respondents, namely, that under the full faith and credit clause, Art. IV, § 1 of the Constitution of the United States an award of compensation for personal injury under the Illinois Workmen's Compensation Act (Ill. Rev. Stat., ch. 48, §§ 138-172) bars a further recovery of compensation for the same injury under the Wisconsin Compensation Act (ch. 102, Wis. Stats.); notwithstanding a provision in the Illinois proceedings that such rights as the injured employee might have under the Wisconsin Compensation Act would not be affected. The

cases upon which petitioners rely in support of jurisdiction are:

Magnolia Petroleum Co. v. *Hunt*, 320 U. S. 430;

Industrial Comm. v. *Nordenholt Co.*, 259 U. S. 263 (1922);

Williams v. *North Carolina*, 325 U. S. 226 (1945).

C

The Question Involved

Where employer and employee were subject to the compensation laws of both Illinois and Wisconsin, does a compensation award made in Illinois pursuant to a settlement contract, which expressly stated that it was not to affect such rights as the employee might have under the Wisconsin Compensation Act, bar all recovery in Wisconsin under the Wisconsin Compensation Act because of the full faith and credit clause of the Constitution of the United States?

D

Reasons Relied On for Allowance of Writ

1. The applicability of the full faith and credit clause of the Constitution of the United States is a federal question of substance, and your petitioners contend that in the instant case the State Court has decided the federal question in a way probably not in accord with the applicable decisions of this Court (Supreme Court Rule 38, par. (5) (a)). It is contended that the case of *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, which was held to be controlling, is not applicable to the case at bar because the limiting provision in the settlement contract in Illinois became an integral part of the Illinois award which, by necessary implication, contemplated a further award in Wis-

consin, and hence did not bar the making of a further award in Wisconsin.

2. While the Supreme Court of Wisconsin recognized in its decision that this Court did not in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, pass on the situation where the compensation law of the state making the first award did not bar recovery in both states, it stated that:

> "* * * the case was decided wholly on the effect to be given to the full-faith-and-credit clause of the constitution, and to hold otherwise for the reason here urged would require us to disregard the language and reasoning used in the decision" *McCartin* v. *Industrial Comm.*, 248 Wis. 570, 575 (R. 185).

It is contended that the difference in the statutory provisions involved makes inapplicable the decision of this Court in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, and that the Supreme Court of the State of Wisconsin erroneously gave a broader interpretation to this Court's opinion than was contemplated by this Court.

3. Because of the interest of the State of Wisconsin in effectuating its policy regarding additional payments from a state fund in cases involving second injuries, the state should be permitted to apply its own compensation law even though such application involved an exception to the full faith and credit clause. The decision of the Supreme Court of the State of Wisconsin, by deciding the instant case in favor of the respondents, decided a federal question of substance which, so far as petitioners are informed, was not theretofore determined by this Court.

Wherefore, Your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Wisconsin, commanding that court to certify and send to this

Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 149, August Term, 1945, *E. E. McCartin and Continental Casualty Company, a Corporation, Respondents,* v. *Industrial Commission of Wisconsin, Leo Thomas Kopp, and State of Wisconsin, Appellants,* and that the said judgment of the Supreme Court of Wisconsin may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

JOHN E. MARTIN,
Attorney General of Wisconsin;
MORTIMER LEVITAN,
Assistant Attorney General of Wisconsin, Counsel for Petitioners, Industrial Commission of Wisconsin, and State of Wisconsin.

I hereby join in the foregoing petition for writ of certiorari.

LEO THOMAS KOPP,
Pro se.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 270

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, AND STATE OF WISCONSIN,
Petitioners,

vs.

E. E. McCARTIN AND CONTINENTAL CASUALTY COMPANY, A CORPORATION

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Opinion of the Court Below

The opinion of the Wisconsin Supreme Court is reported in 248 Wis. 570, and is also printed in full in the record (R. 181-186).

Jurisdiction

The jurisdiction of this Court is invoked under sec. 237(b) of the Federal Judicial Code (28 U. S. C. § 344 (b)). The State Court has decided a federal question in a way probably not in accord with applicable decisions of this Court, and has decided a federal question of substance not

theretofore determined by this Court (Supreme Court Rule 38 (5) (a)). The date of the judgment to be reviewed is April 12, 1946 (R. 180).

Statement of the Case

This has already been stated in the preceding petition under A (p. 1), which is here adopted and made a part of this brief.

Specification of Errors

The Wisconsin Supreme Court erred in finding and holding that under the facts of this case the full faith and credit clause of the Constitution of the United States precluded a recovery under the Compensation Act of Wisconsin, and it also erred in not recognizing an exception to the full faith and credit clause because of the interest of the State of Wisconsin in the proceedings.

ARGUMENT

Summary of Argument

Point A. Decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is inapplicable because Illinois award was based on settlement agreement expressly stating that it did not affect rights employee might have under Wisconsin Compensation Act.

Point B. *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, expressly states that it did not decide case where state making first award (as in present case) would allow compensation notwithstanding previous award in another state.

Point C. Provisions in Wisconsin Compensation Act for payment of $75 into State Treasury for second injury fund in cases of specified injuries, constitute sufficient grounds for creation of exception to full faith and credit clause.

Point D. Because of apparent departure from generally recognized rule in compensation cases, decision in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, should be re-examined and limits of application indicated.

Point A

Decision in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is inapplicable because Illinois award was based on settlement agreement expressly stating that it did not affect rights employee might have under Wisconsin Compensation Act.

The settlement contract entered into in Illinois between E. E. McCartin, the employer, and L. T. Kopp, the injured employee, contained the following provision: "This settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin" (R. 152). This reservation in Illinois of rights under the Wisconsin Compensation Act was manifestly the result of an understanding between the parties that payment under the Illinois law would not preclude the assertion of rights under the Wisconsin law. The Director of Workmen's Compensation for the Wisconsin Industrial Commission, prior to the making of the settlement agreement, notified by letter Mr. McCartin's insurance carrier that the Commission had informed Mr. Kopp that he was entitled to proceed under the Illinois Act and then claim compensation under the Wisconsin Act with credit to be given for the amount paid under the provisions of the Illinois Act (R. 168); and the attorney who later signed the settlement agreement on behalf of the employer (R. 154), answered in a letter in which he stated that the Commission's letter had been referred to him for reply, and also stated in part:

"• • • We understand from your advices that if we make payments to Kopp under the Illinois Work-

men's Compensation Act, for the loss of his left eye, you, in the event you make an award to Kopp under the Wisconsin Act for the same injury, will credit your award with the amount paid to Kopp under the provisions of the Illinois Act. With this understanding, we are proceeding to pay Kopp compensation under the provisions of the Illinois Act" (R. 170-171).

Under the Illinois law, the said settlement contract, (R. 151-154), which had been approved by the Illinois Commission (R. 193), became "in legal effect an award." *Hartford Accident Co.* v. *Indus. Com.*, 320 Ill. 544, 546 (1926). Approval was necessary under § 23 of the Illinois Workmen's Compensation Act (§ 160 of ch. 48, Ill. Rev. Stat., 1943), which provided in part:

> "No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this Act in regard to the amount of compensation which may be payable to such employee, personal representative or beneficiary hereunder except after approval by the Industrial Commission."

The approved settlement contract, then, became in legal effect an award reserving rights under the Wisconsin Compensation Act. The reservation of rights under the Wisconsin Compensation Act was not eliminated by an application and order for lump sum payment. Under the provisions of § 9 of the Illinois Compensation Act (ch. 48, § 146, Ill. Rev. Stat., 1943),

> "Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum, may petition the commission, asking that such compensation be so paid, and if, upon proper notice to the interested parties and a proper showing made before such commission or any member thereof, it appears to the best interest of the

parties that such compensation be so paid, the commission may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three per centum per annum with annual rests: * * *."

The application filed for lump sum payment was necessarily for commutation of the compensation due according to the settlement contract (R. 155-156). The stenographic report of the proceedings before the Industrial Commission of Illinois indicates that Mr. Kopp understood that he retained rights under the Wisconsin Compensation Act (R. 165-168). The Illinois Commission endorsed its approval on the petition for lump sum, and Mr. Kopp signed a final receipt acknowledging the receipt of $2,112 "in full settlement of compensation under the provisions of the Illinois Workmen's Compensation Act" (R. 159-160). Thereafter the Industrial Commission of Illinois issued a formal "Lump Sum Settlement Order" (R. 161-162). The lump sum settlement order was merely an order for lump sum payment of the amount due under the settlement contract in accordance with the Illinois law. It did not purport to affect in any way the rights reserved in the settlement contract. Because the proceedings in Illinois contemplated an additional award under the Compensation Act of Wisconsin, there was no final and conclusive disposition in Illinois of all rights arising from the personal injury sustained in Wisconsin.

Point B

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, expressly states that it did not decide case where state making first award (as in present case) would allow compensation notwithstanding previous award in another state.

In *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 443, this Court said:

> "* * * We have no occasion to consider what effect would be required to be given to the Texas award if the Texas courts held that an award of compensation in another state would not bar an award in Texas, for as we have seen, Texas does not allow such a second recovery."

The Texas law (Texas Rev. Civ. Stat., Title 130, Art. 8306, § 19) provides "that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the State where such injury occurred."

Sec. 5 of the Illinois Compensation Act defines the term "employee" as used in the Compensation Act, as including, among others:

> "Second—Every person in the service of another under any contract of hire, express or implied, oral or written, including persons whose employment is outside of the State of Illinois where the contract of hire is made within the State of Illinois * * *" (Ch. 48, § 142, Ill. Rev. Stat., 1943).

Thus under the Illinois compensation law, where the contract of hire is made in Illinois, the Illinois law expressly applies, although the employment is outside of the State.

The Illinois Compensation Act "does not cover injuries sustained outside of Illinois where the contract of em-

ployment is entered into outside of this State." *Severin* v. *Industrial Com.*, 363 Ill. 217, 219 (1936). If the contract is made in Illinois, compensation is payable in that State no matter where the injury occurred. Where the contract is made in Illinois, payment of compensation under the law of some other state would not, therefore, extinguish compensation rights under the Illinois law. No case has been found in which Illinois has held that an award in the state where the accident occurred prevented a subsequent award in Illinois where the employment contract had been made, and there is no statutory provision (as there was in Texas) preventing recovery in case the injured employee recovers compensation in the state in which the injury occurs. In view of the Illinois law, it is difficult to see how the courts of that State could hold that an award in the state in which the injury occurred would bar an award in Illinois, where the employment contract had been entered into. Thus the present controversy presents squarely the situation expressly not passed upon in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, and the express reservation justifies the conclusion that this Court did not intend its decision to apply to a factual situation different from that presented, and especially, not to a factual situation like that presented in the instant case.

POINT C

Provisions in Wisconsin Compensation Act for payment of $75 into State Treasury for second injury fund in cases of specified injuries, constitute sufficient grounds for creation of exception to full faith and credit clause.

In *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 438, this Court recognized "that there may be exceptional cases in which the judgment of one state may not override the laws and policy of another," but "this Court is the final arbiter of the extent of the exceptions." Under the

provisions of subsec. (1) of sec. 102.59, Wis. Stats., 1943, "If an employe has at the time of injury permanent disability the equivalent of 15 per cent or more of permanent total disability," he is paid additional compensation from "the funds provided in this section." Subsec. (2) of sec. 102.59, Wis. Stats., 1943, provided in part as follows: "In case of the loss or of the total impairment of a hand, arm, foot, leg, ear or eye, the employer shall be required to pay seventy-five dollars into the state treasury." Subsec. (3) of sec. 102.59, Wis. Stats., 1943, provided that "The moneys so paid into the state treasury, with all accrued interest, is hereby appropriated to the commission for the discharge of all liability for special additional indemnity accruing under this section."

The duty is placed on the Attorney General to "represent the state in all cases involving payment into or out of the state treasury under the provisions of subsection (3) of section 20.07, and sections 102.49 and 102.59" (subsec. (1) of sec. 102.64, Wis. Stats., 1943). The purpose of the "second injury" provisions of the Wisconsin Compensation Act is to eliminate discrimination against the employee who had previously lost an eye, ear, hand, arm, foot or leg, when he comes to seek re-employment, and to secure to an employee suffering the total impairment of a second member such indemnity as is commensurate with the seriousness of the injury. It should be noted that Illinois also has a "second injury" fund Illinois Workmen's Compensation Act, § 7(e); § 8(e)20 and (f). Ill. Rev. Stat., 1943, ch. 48, § 144(e); § 145(e)20 and (f)). Louisiana, however, does not appear to have a "second injury" fund, and hence *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, could give no consideration to a compensation act which provides not only for payments to the injured employee, but also for payments into a state fund.

The fact that in the present case the Industrial Commission of Wisconsin reserved the question of payment to the state fund (R. 123, 129-130) seems immaterial; the right to order payment in the future is of prime importance. An exception to the full faith and credit clause, based on the interest of the State of Wisconsin, as distinct from the rights of the injured employee, is urged because of the statutory provision for payments to the State of Wisconsin. Mr. Justice Douglas said in his concurring opinion in *Esenwein* v. *Commonwealth*, 325 U. S. 279, 282 (1945):

> "• • • The problem under the full faith and credit clause is to accommodate as fully as possible the conflicting interests of the two States."

Because this Court is the final arbiter, it is respectfully submitted that a writ of certiorari should be granted to determine whether an exception should be made to the full faith and credit clause, so that the interests of the State of Wisconsin in the application of the Compensation Act can be accommodated without undue conflict with the interests of the State of Illinois.

POINT D

Because of apparent departure from generally recognized rule in compensation cases, decision in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, should be re-examined and limits of application indicated.

The decision of *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, is in apparent conflict with the practice generally accepted and followed by the states in compensation cases. American Law Institute, Restatement of Conflict of Laws (1934), § 403, states the rule:

> "Award already had under the Workmen's Compensation Act of another state will not bar a proceed-

ing under an applicable Act, but the amount paid on a prior award in another state will be credited on the second award."

This was also the rule followed by Wisconsin (see opinion of the Wisconsin Supreme Court in the instant case, 248 Wis. 570, 572 (R. 181)).

In the majority opinion in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, it is stated that this rule "would seem to be intended as nothing more than a statement of local rules of conflict of laws when unaffected by the full faith and credit clause, since full faith and credit, if it does not require that a first award bar a second, would not compel credits upon the second award of payments made under the first (footnote, p. 441). It is respectfully submitted, however, that the fact that most states applying the *Restatement* rule gave credit on their awards for the amounts previously awarded in another state is also consistent with a possible interpretation that they thus intended to fulfill the requirements of the full faith and credit clause. It is submitted that this Court should grant certiorari to re-examine *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, and define the limits of the applicability of such a rule which seems to oppose directly the generally accepted practice.

There also seems to be a conflict between language in the *Magnolia* case and the holding of *Williams* v. *North Carolina*, 325 U. S. 226 (1945). In the *Magnolia* case it was said; "From the beginning this Court has held that these provisions have made that which has been adjudicated in one state *res judicata* to the same extent in every other" (320 U. S. 430, 438). In *Williams* v. *North Carlina*, 325 U. S. 226 (1945), it was held that North Carolina was not required by the full faith and credit clause to recognize a finding of domicile made by a Nevada court in a divorce

proceeding in Nevada, a finding which certainly was *res judicata* in Nevada. Does the statement quoted from the *Magnolia* case still stand?

Williams v. *North Carolina*, 325 U. S. 226 (1945) also creates uncertainty in regard to the *Magnolia* case wherein Mr. Justice Jackson stated in his concurring opinion:

> "I concur with the opinion of the Chief Justice.
>
> "If the Court were to reconsider *Williams* v. *North Carolina*, 317 U. S. 287, in the light of the views expressed by Mr. Justice Black, I should adhere to the views I expressed in dissent there. Until we do so, I consider myself bound by that decision" (320 U. S. 446).

In *Williams* v. *North Carolina*, 325 U. S. 226 (1945), Mr. Justice Jackson joined in the concurring opinion filed by Mr. Justice Murphy, and so uncertainty has arisen as to whether the holding of *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, would be adhered to.

This uncertainty as to the applicability, extent and force of the holding of the *Magnolia* case has been reflected in comments in legal writing. For instance, Samuel B. Horovitz in his recent treatise on "Injury and Death Under Workmen's Compensation Laws" (1944), has to say in regard to the Magnolia case:

> "Hence, after three decades of workmen's compensation decisions, the law of extraterritoriality remains unnecessarily in a state of chaos and confusion. Undoubtedly efforts will be made to limit the Magnolia Petroleum Company decision from the start to cases in which (1) the employee has personally 'sought' the award; (2) he has successfully 'recovered' an award, rather than having lost his case; (3) there is a final 'judgment' either in a court, on appeal from the board, or where the board decision by law amounts to a final judgment or decree; and (4) the act of the first state to

be 'selected' does not allow additional awards, *i. e.*; a second recovery" (p. 41).

In the article by Elliott E. Cheatham on "Res Judicata and the Full Faith and Credit Clause: Magnolia Petroleum Co. *v.* Hunt," 44 Columbia Law Review 330 (1944), the author asks the question: "Are there in the setting of this case or in the operation of the Texas judgment any grounds for an exception?" (p. 342), and then states:

> When the setting and nature of workmen's compensation are considered, several factors appear which may well be thought to call for exceptional treatment, and four will be mentioned.
>
> "1. The party seeking relief is a member of the necessitous class, injured workmen, which in many branches of our law has received special treatment. • • •
>
> "2. Workmen's compensation statutes are addressed to a continuing situation, involving the burden of support of a person unable to support himself, and in this situation the home state of the worker has the special interest which the Supreme Court has many times recognized. • • •
>
> "3. Workmen's compensation proceedings differ in an important respect, as Justice Black points out, from the proceedings in which the court heretofore has considered the effect of a judgment or award. • • •
>
> "4. Adherence to the rule of the principal case may give the employer or his insurance company an opportunity for overreaching. • • •
>
> "These considerations show that exceptional treatment of workmen's compensation awards may be wise. They have induced the majority of the states which have dealt with the matter to allow a second, supplemental award. It is the function of the Supreme Court to weigh the factors and to determine whether a de-

parture from the usual requirements of full credit is justified" (pp. 343-345).

See also, Workmen's Compensation Award—Commonplace or Anomaly in Full Faith and Credit Pattern?" by Paul A. Wolkin in 92 U. of Pa. Law Review (1944), p. 401, and "Reflections on Magnolia Petroleum Co. *v.* Hunt," by Harold Wright Holt in 30 Cornell Law Quarterly (1944), p. 160.

Conclusion

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers and that to such end a writ of certiorari should be granted and this Court should review the decision of the Supreme Court of Wisconsin and finally reverse it.

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I hereby join in the foregoing brief in support of petition for writ of certiorari.

LEO THOMAS KOPP,
Pro se.

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In The

Supreme Court of the United States

October Term, 1946

No. 270

INDUSTRIAL COMMISSION OF WISCONSIN,
LEO THOMAS KOPP, and
STATE OF WISCONSIN,

Petitioners,

vs.

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation.

BRIEF OF PETITIONERS

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INDEX

Subject Index

	Page
The Opinion of the Court Below	1
Jurisdiction	1
Statement of the Case	2
Specification of Errors	4
Summary of Argument	5
Argument	5
I. Decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is inapplicable because award of compensation in Illinois in effect reserved rights to additional compensation under Wisconsin Workmen's Compensation Act	5
II. Decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, expressly reserved consideration of case where the state making first award (as in the present case) would allow compensation notwithstanding previous award in another state	12
III. Provision in Wisconsin Compensation Act for payment of $75 into State Treasury for "second injury" fund in cases of specified injuries distinguishes present case from *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430	17
IV. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, should be overruled or limited as to application,	

Page

because it is contrary to generally recognized rules in compensation cases, and exception to full faith and credit requirements should be made in compensation cases 22

Table of Cases Cited

Alaska Packers Asso. v. Industrial Acci. Com., 294 U. S. 532 (1935) 18, 27, 28

Biddy v. Blue Bird Air Service, 374 Ill. 506, 30 N. E. (2d) 14 (1940) 14

Chicago, R. I. & P. R. Co. v. Schendel, 270 U. S. 611 (1926) 28

Esenwein v. Commonwealth, 325 U. S. 279 (1945) 21

Hartford Accident Co. v. Indus. Com., 320 Ill. 544 (1926) 6

Interstate Power Co. v. Industrial Comm., 203 Wis. 466, 234 N. W. 889 (1931) 19-21, 25

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430 ..... 4, 5, 9, 10, 12, 15, 16, 17, 18, 22, 25, 26, 29-30

Miller v. Yellow Cab Co., 308 Ill. App. 217, 31 N. E. (2d) 406 (1941) 13-14

Milwaukee County v. White Co., 296 U. S. 271 (1935) 15

Ohio v. Chattanooga Boiler & Tank Co., 289 U. S. 439 (1932) 16

Pacific E. Ins. Co. v. Industrial Acci. Com., 306 U. S. 493 (1939) 28

Page

Salvation Army v. Industrial Comm., 219 Wis. 343, 263 N. W. 349 (1935) 25

Severin v. Industrial Commission, 363 Ill. 217, 2 N. E. (2d) 65 (1936) 13

State Farm Mutual Auto Ins. Co. v. Duel, 324 U. S. 154 (1945) 21

Williams v. North Carolina, 325 U. S. 226 (1945) 19

Constitutional Provisions and Statutes

The Constitution of the United States:
Article IV, Section 1 9

United States Statutes:

§ 237 (b), Federal Judicial Code 1

28 U. S. C. § 344 (b) 1

Act of May 26, 1790, c. 11, 1 Stat. 122, as amended 9

28 U. S. C. § 687 9

Statutes of the State of Illinois:

Workmen's Compensation Act, § 5 (Ill. Rev. Stat. 1943, ch. 48, § 142) 13

Workmen's Compensation Act, § 7 (e); § 8 (e) 20 and (f); (Ill. Rev. Stat. 1943, ch. 48, § 144 (e); § 145 (e) 20 and (f)) 18

Workmen's Compensation Act, § 9 (Ill. Rev. Stat. 1943, ch. 48, § 146) 7

Workmen's Compensation Act, § 23 (Ill. Rev. Stat. 1943, ch. 48, § 160) 6-7

Page

Statutes of the State of Texas:

Rev. Civ. Stat., Title 130, Art. 8306, § 19 12-13

Statutes of the State of Wisconsin:

(1923)

Sec. 102.09 (4m) (f) 20

(1943)

Sec. 102.59 3-4

Sec. 102.59, subsecs. (1), (2) and (3) 17

Sec. 102.64, subsec. (1) 17

Text Books and Special Articles

150 A. L. R. 431 (Annotation on "Award under workmen's compensation act as bar to, or ground for reduction of, claim under act of another state") 26

American Law Institute, Proceedings of, Vol. X (1931-1932), 76-77 22-23

1 Am. Jur., Actions, § 101, pp. 484-485 10-11

Conflict of Laws, by Joseph H. Beale, Volume Two (1935), § 403.1, pp. 1327-1328 23

57 Harvard Law Review 242, 246-247 (1943-1944), note on "Conflict-of-Laws Provisions in Workmen's Compensation Acts" 24

38 Illinois Law Review 384, 390-391 (1943-1944), comments on "Local Policy in the Conflict of Laws" 25-26

"Injury and Death Under Workmen's Compensation Laws," by Samuel B. Horovitz (1944), 40, 40-44 25

Page

"Reflections on Magnolia Petroleum Co. v. Hunt," by Harold Wright Holt, 30 Cornell Law Quarterly (1944-45), 160 26

"Res Judicata and the Full Faith and Credit Clause: Magnolia Petroleum Co. v. Hunt," by Elliott E. Cheatham, 44 Columbia Law Review (1944), 330, 342-345 30-34

Restatement of Conflict of Laws, §§ 401, 402 23

Restatement of Conflict of Laws, § 403 ..... 22, 23, 24, 25

Restatement of the Law of Judgments, § 62, pp. 243, 257 11

18 Tulane Law Review 509, 512-513, Notes 26

"Workmen's Compensation Award—Commonplace or Anomaly in Full Faith and Credit Pattern?" by Paul A. Wolkin, 92 U. of Pa. Law Rev. (1943-44), 401, 407, 410-411 ..... 26, 26-27

"Workmen's Compensation and the Conflict of Laws—the Restatement and Other Recent Developments," by Ralph H. Dwan, 20 Minnesota Law Review (1936), 19, 41 24

In The

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No. 270

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LEO THOMAS KOPP, and
STATE OF WISCONSIN,

Petitioners,

vs.

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation.

BRIEF OF PETITIONERS

The Opinion of the Court Below

The opinion of the Wisconsin Supreme Court is reported in 248 Wis. 570, and is also printed in full in the record (R. 181-186).

Jurisdiction

The jurisdiction of this Court is invoked under sec. 237(b) of the Federal Judicial Code (28 U. S. C. § 344 (b)). The State Court has decided a federal question in a way probably not in accord with applicable decisions of this Court, and has decided a federal question of substance not

theretofore determined by this Court (Supreme Court Rule 38 (5) (a)). The date of the judgment to be reviewed is April 12, 1946 (R. 180).

Statement of the Case

This case involves the question of whether under the full faith and credit clause of the Federal Constitution an award of workmen's compensation made in Illinois (where the contract of employment had been entered into) pursuant to a settlement agreement between employee and employer which expressly stated that it was not to affect any rights that the employee might have under the Wisconsin Compensation Act, precluded all recovery under the Compensation Act of Wisconsin (where the injury occurred).

There is no dispute as to the facts. Leo Thomas Kopp, who resided at Rockford, Illinois (R. 134, 135), had worked as a bricklayer (R. 134) in Illinois for E. E. McCartin (R. 135), a contractor who was an Illinois resident (R. 147, 148). Pursuant to a contract made in Illinois (R. 135, 141, 142, 144), Kopp agreed to work for McCartin on a building job at Beloit, Wisconsin (R. 135). The job lasted about ten months (R. 135, 142, 144), during which time Kopp drove back and forth between Beloit and his home in Rockford (R. 142). On May 5, 1943, while working for McCartin on the Beloit job (R. 134), Kopp suffered an injury to his left eye (R. 133, 134). It was admitted that McCartin was subject to the Wisconsin Compensation Act (R. 134).

On June 7, 1943, Kopp filed an application for adjustment of claim with the Wisconsin Industrial Commission

(R. 115-116). On July 20, 1943, he filed an application for adjustment of claim with the Illinois Industrial Commission (R. 148-151), in which the general nature of the dispute was given as "Whether Illinois or Wisconsin has jurisdiction in my case" (R. 150). A settlement contract, dated November 3, 1943 (R. 151-154), filed with the Illinois Industrial Commission on November 29, 1943, and approved December 3, 1943 (R. 186), contained this provision: "This settlement does not effect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin" (R. 152). On November 29, 1943 (R. 162), Kopp filed with the Illinois Commission a petition for lump sum (R. 137, 155-157), and on December 3, 1943 (R. 137), the Illinois Commission held a hearing on said petition (R. 137-140, 163-168) and allowed the lump sum (R. 167). On December 7, 1943, full payment was made of compensation due under the Illinois Compensation Act (R. 134, 137, 141, 159-160), and on January 10, 1944, the Illinois Industrial Commission issued a formal lump sum settlement order (R. 161-162).

Thereafter E. E. McCartin and Continental Casualty Company, by their attorneys, filed an amended answer to the application pending before the Wisconsin Industrial Commission setting forth as a special defense that under the full faith and credit clause of the Constitution of the United States proceedings under the Wisconsin Act were barred by the award and payment under the Illinois Workmen's Compensation Act (R. 117-120).

The Wisconsin Industrial Commission held a hearing on February 24, 1944 (R. 121); and on March 9, 1944, the Attorney General's Office of Wisconsin addressed a letter to the said Commission making a claim for contribution to the

"state fund" under the provisions of sec. 102.59 of the Wisconsin Statutes (R. 133). On April 18, 1944, an examiner for said Industrial Commission entered an interlocutory award ordering the payment of certain benefits, but giving credit for the sums paid under the Illinois Compensation Act and making certain reservations, among them the question of payment to the "state fund," until determination of the permanent impairment of vision (R. 120-129). The said Industrial Commission affirmed the order of the examiner on May 15, 1944 (R. 129-132).

An action to review the Wisconsin Industrial Commission's order was commenced in the Circuit Court for Dane County, Wisconsin (R. 111-114), and that Court on November 20, 1945, entered a judgment setting aside the order and award of the Industrial Commission (R. 101-111, 172-173). On appeal therefrom by the Industrial Commission of Wisconsin, Leo Thomas Kopp, and State of Wisconsin, in accordance with the Wisconsin Statutes, the Supreme Court of the State of Wisconsin on April 12, 1946, rendered its decision and judgment affirming the judgment of said Circuit Court, basing its decision and judgment on the authority of *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430.

Specification of Errors

The Wisconsin Supreme Court erred in finding and holding that under the facts of this case the full faith and credit clause of the Constitution of the United States precluded a recovery under the Workmen's Compensation Act of Wisconsin.

Summary of Argument

I. Decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is inapplicable because award of compensation in Illinois in effect reserved rights to additional compensation under Wisconsin Workmen's Compensation Act.

II. Decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, expressly reserved consideration of case where the state making first award (as in the present case) would allow compensation notwithstanding previous award in another state.

III. Provision in Wisconsin Compensation Act for payment of $75 into State Treasury for "second injury" fund in cases of specified injuries distinguishes present case from *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430.

IV. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, should be overruled or limited as to application, because it is contrary to generally recognized rules in compensation cases, and exception to full faith and credit requirements should be made in compensation cases.

ARGUMENT

I. DECISION IN *MAGNOLIA PETROLEUM CO. v. HUNT*, 320 U. S. 430, IS INAPPLICABLE BECAUSE AWARD OF COMPENSATION IN ILLINOIS IN EFFECT RESERVED RIGHTS TO ADDITIONAL COMPENSATION UNDER WISCONSIN WORKMEN'S COMPENSATION ACT.

The settlement contract entered into in Illinois between E. E. McCartin, the employer, and L. T. Kopp, the injured employee, contained the following provision: "This settlement does not effect any rights that applicant may have

under the Workmen's Compensation Act of the State of Wisconsin" (R. 152). This reservation in Illinois of rights under the Wisconsin Compensation Act was manifestly the result of an understanding between the parties that payment under the Illinois law would not preclude the assertion of rights under the Wisconsin law. The Director of Workmen's Compensation for the Wisconsin Industrial Commission, prior to the making of the settlement agreement, notified by letter the Continental Casualty Company, Mr. McCartin's insurance carrier, that the Commission had informed Mr. Kopp that he was entitled to proceed under the Illinois Act and then claim compensation under the Wisconsin Act with credit to be given for the amount paid under the provisions of the Illinois Act (R. 168); and the attorney who later signed the settlement agreement on behalf of the employer (R. 154), answered by a letter in which he stated, *inter alia*, that the Commission's letter had been referred to him for reply and that:

> * * * We understand from your advices that if we make payments to Kopp under the Illinois Workmen's Compensation Act, for the loss of his left eye, you, in the event you make an award to Kopp under the Wisconsin Act for the same injury, will credit your award with the amount paid to Kopp under the provisions of the Illinois Act. With this understanding, we are proceeding to pay Kopp compensation under the provisions of the Illinois Act" (R. 170-171).

Under the Illinois law, the said settlement contract (R. 151-154), which had been approved by the Illinois Commission (R. 186), became in "legal effect an award." *Hartford Accident Co. v. Indus. Com.*, 320 Ill. 544, 546 (1926). Approval was necessary under § 23 of the Illinois

Workmen's Compensation Act (§ 160 of ch. 48, Ill. Rev. Stat. 1943), which provided in part:

> "No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this Act in regard to the amount of compensation which may be payable to such employee, personal representative or beneficiary hereunder except after approval by the Industrial Commission."

The approved settlement contract, then, became in legal effect an award reserving rights under the Wisconsin Compensation Act.

The reservation of rights under the Wisconsin Compensation Act was not eliminated by an application and order for lump sum payment. Under the provisions of § 9 of the Illinois Compensation Act (ch. 48, §146, Ill. Rev. Stat. 1943),

> "Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum, may petition the commission, asking that such compensation be so paid, and if, upon proper notice to the interested parties and a proper showing made before such commission or any member thereof, it appears to the best interest of the parties that such compensation be so paid, the commission may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three per centum per annum with annual rests: * * *."

The petition for lump sum filed by the Illinois Commission (R. 155-157) was for "commutation of the compensa-

tion" (R. 156)—and it was necessarily for commutation of the compensation due according to the settlement contract. At the December 3, 1943, hearing before the Illinois Industrial Commission on the petition for lump sum, the commissioner, addressing Kopp, stated in part:

> "* * * If you are concerned about the Workmen's Compensation Act in Wisconsin they have a provision in there this Settlement does not affect any rights the Applicant may have under the Compensation Act of the State of Wisconsin. * * * I do not know what it might mean, what your rights are in the State of Wisconsin—I do not know whether the Wisconsin Act provides for any increase where it has been already closed out in another state, I do not know but that provision is in there. What it is worth I am in no position to advise you. I sit only as a member of the Industrial Commission of the State of Illinois. I do not know what the Wisconsin Act is. I do not know what rights you have under the Wisconsin Act, if any. I can't say you will be protected there, I do not know" (R. 139-140).

Mr. Kopp replied in part: "I will take chances on Wisconsin" (R. 140). The final receipt signed by Mr. Kopp acknowledged the receipt of $2,112 "in full settlement of compensation under the provisions of the Illinois Workmen's Compensation Act" (R. 159-160).

The order for lump sum (R. 161-162) was not a determination of rights and obligations under the Illinois Compensation Act; it changed no provisions in the settlement contract except the rate of payment. Neither expressly nor by implication did it eliminate the reservation in the settlement contract concerning rights which Kopp might have under the Wisconsin Compensation Act.

In *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, a Louisiana resident hired in Louisiana sustained an injury in Texas. This Court held that a final award of compensation under the Texas Compensation Act precluded a subsequent award in Louisiana under the Louisiana Compensation Act, although credit was given for the amount of the Texas award. The result was based on Article IV, Section 1 of the Constitution, which provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof,"

and the implementing Act of Congress:

> "* * * And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken" (Act of May 26, 1790, c. 11, 1 Stat. 122, as amended, 28 U. S. C. § 687).

The present case is distinguishable, because instead of a final award in Illinois purporting to dispose of all liability arising from the industrial accident which occurred in Wisconsin, there was an award in Illinois which reserved rights under the Wisconsin Compensation Act. Unlike the Texas award, the Illinois award with a reservation of rights under the Wisconsin Compensation Act, did not dispose of all claims arising from the industrial accident, but only claims arising and adjudicable under the Illinois law. In Illinois

the binding effect of the award was limited by the terms of the award. Neither in Illinois nor in Wisconsin did the Illinois award affect rights under the Wisconsin Compensation Act. When Wisconsin awarded additional compensation under the provisions of the Wisconsin Act, giving credit for the amount paid under the Illinois award, it accorded to the Illinois award the same faith and credit as it had in Illinois. Thus the Wisconsin award was in compliance with the requirement that a compensation award "be given the same effect as res judicata in another state as it has in the state where rendered" (*Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 441).

Even if the provision in the settlement agreement concerning rights under the Wisconsin Act should not be considered as an integral part of the Illinois award, the agreement in itself would be sufficient to authorize proceedings under the Wisconsin Compensation Act. Assuming that only one cause of action arose from the accident, with remedies provided by both Wisconsin and Illinois, the compensation claimant had the privilege of splitting his cause of action with the consent of the employer and his insurance carrier.

In *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 444, this Court stated that the plaintiff "cannot split up his claim and '*a fortiori* he cannot divide the grounds of recovery.' *United States v. California & Oregon Land Co.*, 192 U. S. 355, 358." However, as stated in 1 Am. Jur., Actions, § 101, pp. 484-485:

> "The rule that a cause of action may not be split into two or more causes of action is a rule for the benefit of the party defendant; he may agree to a splitting of the cause of action, and in such case the courts will respect the agreement, or he may waive his right to

insist upon the rule forbidding the splitting of a single cause of action. * * *

"Even though the defendant has not agreed to a splitting of the cause of action, his conduct may have been such as to require the plaintiff to split the cause of action to obtain complete justice, in which case the court will permit the cause to be split.".

This is in accord with the exception contained in § 62 of the "Restatement of the Law of Judgments," where one of the exceptions to the rule against splitting the cause of action is "(c) where the defendant consented to the splitting of the plaintiff's cause of action" (p. 243). Under Comment "*m*" which relates to this clause, the Restatement states in part:

"The purpose of the rule stated in this Section is to protect the defendant from being harassed by several actions based upon a single cause of action. It is not applicable where the defendant consents, in express words or otherwise, to the splitting of the cause of action.

"* * *" (p. 257).

In signing the settlement agreement, with the provision regarding rights under the Wisconsin Act, the employer agreed that the employee might split his cause of action. Not only had the employee been informed of his rights to proceed under the Wisconsin Compensation Act notwithstanding an award in Illinois (R. 168), but the employer, by his insurance carrier, announced his intention of paying under the Illinois law with the understanding that credit would be given for a subsequent Wisconsin award (R. 170-171). Even if some elements of an estoppel

are lacking, the employer by his representation to the Wisconsin Commission waived any privilege he might have had of urging that payment under the Illinois law precluded proceedings under the Wisconsin Compensation Act. The inclusion in the settlement agreement of the provision that the settlement agreement "does not effect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin" (R. 152) crystallized the employer's undertaking into an award, in legal effect a judgment, expressly reserving rights to pursue the remedy under the Wisconsin Compensation Act notwithstanding payments under the Illinois Compensation Act.

II. DECISION IN *MAGNOLIA PETROLEUM CO. v. HUNT*, 320 U. S. 430, EXPRESSLY RESERVED CONSIDERATION OF CASE WHERE THE STATE MAKING FIRST AWARD (AS IN THE PRESENT CASE) WOULD ALLOW COMPENSATION NOTWITHSTANDING PREVIOUS AWARD IN ANOTHER STATE.

In *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 443, this Court said:

> "* * * We have no occasion to consider what effect would be required to be given to the Texas award if the Texas courts held that an award of compensation in another state would not bar an award in Texas, for as we have seen, Texas does not allow such a second recovery."

The Texas law (Texas Rev. Civ. Stat., Title 130, Art. 8306, § 19) provides "that no recovery can be had by the injured employee hereunder in the event he has elected to

pursue his remedy and recovers in the state where such injury occurred."

Sec. 5 of the Illinois Compensation Act (ch. 48, § 142, Ill. Rev. Stat. 1943) defines the term "employee" as used in the Compensation Act, as including, among others:

> "Second—Every person in the service of another under any contract of hire, express or implied, oral or written, including persons whose employment is outside of the State of Illinois where the contract of hire is made within the State of Illinois * * *."

Thus under the Illinois Compensation Act, where the contract of hire is made in Illinois, the Illinois law expressly applies, although the employment is outside of the state.

In *Severin v. Industrial Commission,* 363 Ill. 217, 2 N. E. (2d) 65, 66 (1936), the court said:

> "* * * The Workmen's Compensation Act does not cover injuries sustained outside of Illinois where the contract of employment is entered into outside of this state. Smith-Hurd Ann. St. c. 48, § 142, subd. 2, Cahill's Rev. Stat. 1933, c. 48, p. 1379, par. 205, § 5, subd. 2. We have repeatedly held that the Industrial Commission had no jurisdiction in cases where the injuries were sustained outside of the state unless the proof showed a contract of employment in Illinois. Beall Bros. Supply Co. v. Industrial Comm., 341 Ill. 193, 173 N. E. 64; Johnston v. Industrial Comm., 352 Ill. 74, 185 N. E. 191; Kennedy-Van Saun Mfg. & Engineering Corporation v. Industrial Comm., 355 Ill. 519, 189 N. E. 916; Cole v. Industrial Comm., 353 Ill. 415, 187 N. E. 520, 90 A. L. R. 116."

See, also, *Miller v. Yellow Cab Co.,* 308 Ill. App. 217, 31 N. E. (2d) 406, 410 (1941), where the contract of em-

ployment was made in Texas, the injury occurred in Illinois while the employee was a passenger in a Yellow cab, and compensation was paid under the Texas law. An action was brought in Illinois against the Yellow Cab Company. The Illinois court held that such action could be maintained in Illinois because the Texas compensation act permitted suit against a third party tort feasor.

Cf. Biddy v. Blue Bird Air Service, 374 Ill. 506, 30 N. E. (2d) 14 (1940).

Under the Illinois law compensation is payable in that state only where the contract of employment is made in that state. If the contract is made in Illinois, compensation is payable in that state no matter where the injury occurs. Where the contract is made in Illinois, payment of compensation under the law of some other state would not, therefore, extinguish compensation rights under the Illinois law. No case has been found in which Illinois has held that an award in the state where the accident occurred prevented a subsequent award in Illinois where the employment contract had been made. In view of the Illinois rule, it is difficult to see how the courts of that state could hold that an award in the state in which the injury occurred would bar an award in Illinois, where the employment contract had been entered into. In the present case, for example, Kopp had a right to compensation in Illinois, because he had entered into the employment contract in that state; that right in Illinois could not be affected by the fact that Wisconsin, the state in which the injury occurred, also gave him a right to compensation. Conceding the possibility that Illinois *might* rule that pursuing the Wisconsin remedy constituted a renouncing of rights under the Illi-

nois law; apparently Illinois has not so ruled, and there is no statutory provision (as there was in Texas) preventing recovery in case the injured employee recovers compensation in the state in which the injury occurs. The instant case, then, presents squarely the situation expressly not passed upon in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430.

As long as the Illinois law would not bar a recovery in Illinois notwithstanding a prior award in Wisconsin, an award in Illinois should not bar an award in Wisconsin under the Wisconsin Compensation Act. This proposition is supported by more than comity between the states. See *Milwaukee County v. White Co.*, 296 U. S. 271, 272 (1935), and cases there cited. When one state asserts the power to award compensation under its own law, notwithstanding a prior award under the law of some other jurisdiction, it characterizes the limited nature of its own awards. It recognizes its own award as not disposing of all claims arising from an industrial accident, either on the assumption that the one accident created distinct causes of actions in each state or on the theory that both states have concurrent jurisdiction. If, for instance, Texas awarded compensation regardless of a prior award in another state, a reconciliation of that policy with the requirements of full faith and credit would compel the conclusion that a Texas award was res judicata in Texas only as to rights accruing under the Texas law, and not as to rights recognized by Texas as accruing under the laws of other states. The scope and legal consequences of the Texas award would be the same whether the limitations were imposed by statute, judicial construction, or necessary implication—or by agreement of

the parties that recovery could be had under the laws of each state granting a cause of action.

The result in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 442, was reached primarily because:

> "* * * The Texas award, being a bar to any further recovery of compensation for respondent's injury, is, by virtue of the full faith and credit clause, exclusive of his remedy under the Louisiana Act."

If, however, the Texas award by express terms or by necessary implication had limited itself to liability arising under the Texas law with recognition of enforcible rights under the laws of other states, it is respectfully submitted a different result would have been reached by this Court. The case would then have been controlled by *Ohio v. Chattanooga Boiler & Tank Co.*, 289 U. S. 439, 443 (1932), where this Court said:

> "* * * But, as construed and applied by the highest court of Tennessee, the statute does not preclude recovery under the law of another State. And the full faith and credit clause does not require that greater effect be given the Tennessee statute elsewhere than is given in the courts of that State."

And so in the present case where the Illinois award purported to dispose only of those rights arising under the Illinois law, with implied, as well as express, reservation to the compensation claimant of his rights under the laws of Wisconsin, Wisconsin accorded the award the same effect that it had in Illinois. Hence the Wisconsin award, which gave credit for the amount paid under the Illinois award (R. 123, 131) was not violative of the full faith and credit clause or the implementing congressional enactment.

III. PROVISION IN WISCONSIN COMPENSATION ACT FOR PAYMENT OF $75 INTO STATE TREASURY FOR "SECOND INJURY" FUND IN CASES OF SPECIFIED INJURIES DISTINGUISHES PRESENT CASE FROM *MAGNOLIA PETROLEUM CO. v. HUNT*, 320 U. S. 430.

Under the provisions of subsec. (1) of sec. 102.59, Wis. Stats. 1943, "If an employe has at the time of injury permanent disability the equivalent of 15 per cent or more of permanent total disability," he is paid additional compensation from "the funds provided in this section." Subsec. (2) of sec. 102.59, Wis. Stats. 1943, provided in part as follows: "In case of the loss or of the total impairment of a hand, arm, foot, leg, ear or eye, the employer shall be required to pay seventy-five dollars into the state treasury." Subsec. (3) of sec. 102.59, Wis. Stats. 1943, provided that "The moneys so paid into the state treasury, with all accrued interest, is hereby appropriated to the commission for the discharge of all liability for special additional indemnity accruing under this section."

The duty is placed on the Attorney General to "represent the state in all cases involving payment into or out of the state treasury under the provisions of subsection (3) of section 20.07, and sections 102.49 and 102.59" (subsec. (1) of sec. 102.64, Wis. Stats. 1943). The purpose of the "second injury" provisions of the Wisconsin Compensation Act is to eliminate discrimination against the employee who had previously lost an eye, ear, hand, arm, foot or leg, when he comes to seek re-employment, and to secure to an employee suffering the total impairment of a second member such indemnity as is commensurate with the seriousness of the injury. It should be noted that Illinois also has

a "second injury" fund (Illinois Workmen's Compensation Act, § 7 (e); § 8 (e) 20 and (f); Ill. Rev. Stat. 1943, ch. 48, § 144 (e); § 145 (e) 20 and (f)). Louisiana, however, does not appear to have a "second injury" fund, and hence *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, could give no consideration to a compensation act which provides not only for payments to the injured employee, but also for payments into a state fund.

Although it was undisputed that Kopp "had total impairment of his left eye for industrial use," the ultimate impairment of vision, if removal of the cataract were attempted, "is unknown" (R. 122); consequently the Industrial Commission of Wisconsin reserved the question of payment to the State Fund "until determination of the permanent impairment of vision" (R. 123). If there should be total impairment of vision, the employer would be obligated to pay $75 into the Wisconsin State Treasury. This potential obligation to the Wisconsin "state fund" was not adjudicated in Illinois, for that state was free to apply its own Compensation Act rather than the Compensation Act of Wisconsin (*Alaska Packers Asso. v. Industrial Acci. Com.*, 294 U. S. 532 (1935)). Besides, the Illinois Industrial Commission, an administrative body, had authority to apply only the Illinois law.

In *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 440, this Court pointed out that "Texas is without power to give extraterritorial effect to its laws." No Illinois statute could project beyond the territorial limits of that State so as to prevent the State of Wisconsin from enforcing an obligation which arose in Wisconsin and which Wisconsin had jurisdiction to enforce. An Illinois statute which provided that no employer paying compensation under the Illinois

law should be obliged to comply with laws of Wisconsin regarding payments into a state fund, would obviously be ineffectual. And yet, if in the present case the award in Illinois should be held res judicata or controlling on Wisconsin under the full faith and credit clause, then the Illinois award exerted an extraterritorial influence denied to statutes and destroyed a right which the State of Wisconsin had in its sovereign capacity.

In *Williams v. North Carolina*, 325 U. S. 226, 230 (1945), this Court said:

> "* * * But those not parties to a litigation ought not to be foreclosed by the interested actions of others; especially not a State which is concerned with the vindication of its own social policy and has no means, certainly no effective means, to protect that interest against the selfish action of those outside its borders."

This language is applicable to the present case: the State of Wisconsin, which was not a party to the proceedings in Illinois, should not be foreclosed from vindicating its social and economic interests in requiring payments into its "second injury" fund where employees subject to the Wisconsin Compensation Act suffer the total impairment of specified organs.

The right of the State of Wisconsin to insist on payments into a state fund, notwithstanding an award in another state, was considered by the Wisconsin Supreme Court in *Interstate Power Co. v. Industrial Comm.*, 203 Wis. 466, 234 N. W. 889 (1931). The employee, who lived with his parents in Iowa, was hired in Iowa but was fatally injured in Wisconsin, whereupon his parents entered into a settlement agreement under the compensation act of Iowa.

The Industrial Commission of Wisconsin then ordered payment of $1,600 (corrected by judgment of circuit court to $1,000) into the State Treasury in accordance with sec. 102.09 (4m) (f), Wis. Stats. 1923, which read as follows:

> "In each case of injury resulting in death, leaving no person wholly dependent for support, the employer or insurer shall pay into the state treasury such an amount, when added to the sums paid or to be paid on account of partial dependency, as shall equal four times the deceased employe's average annual earnings, such payment to the state treasury in no event to exceed one thousand dollars."

In upholding the award of payment in Wisconsin, the Wisconsin Supreme Court said:

> "In dealing with the contentions made in this case, it is necessary first briefly to dispose of the question of jurisdiction. On this point we entertain no doubt that the state of Wisconsin has jurisdiction to regulate the conduct of industries within the state, and to prescribe as one of the conditions upon which performance of an out-of-state contract of hiring shall be permitted in this state, compliance with the provisions of the Wisconsin workmen's compensation act. *American Radiator Co. v. Rogge*, 86 N. J. L. 436, 92 Atl. 85, 94 Atl. 85, cited with approval in *Chicago, R. I. & P. R. Co. v. Lundquist*, 206 Iowa, 499, 221 N. W. 228" (203 Wis. 474).

* * *

> "It is contended by the appellant that the disposition of this case in Iowa has the force and effect of a judgment, to which this court must give full faith and credit. This might be a valid argument provided the Iowa court had any jurisdiction to effect proceedings

under the Wisconsin act. We think it has not such jurisdiction. We concede the jurisdiction of the Iowa commission to determine the rights of the parties under the Iowa act, and we claim the jurisdiction of the Wisconsin commission to determine their rights under the Wisconsin act" (203 Wis. 478).

Mr. Justice Douglas said in his concurring opinion in *Esenwein v. Commonwealth*, 325 U. S. 279, 282 (1945):

"* * * The problem under the full faith and credit clause is to accommodate as fully as possible the conflicting interests of the two States."

See, also, *State Farm Mutual Auto Ins. Co. v. Duel*, 324 U. S. 154, 159-160 (1945).

If Illinois by awarding compensation under its Act can nullify the right that the State of Wisconsin has to certain payments into its "state fund," there is no reconciliation of the conflicting interests. Instead, the interests of Illinois are protected to the point where they obliterate the interests of the State of Wisconsin. It is submitted that no authentic conflict occurs in the interests of Wisconsin and Illinois if Wisconsin retains jurisdiction to order payment into the "state fund" notwithstanding a prior award of compensation in Illinois. And similarly, but perhaps to a lesser degree, no conflict occurs if Wisconsin may, not only order payment into the "state fund," but may also order the payment to the injured employee of the amount due as compensation under the Wisconsin Act, but giving credit for the amount paid under the Illinois award.

IV. *MAGNOLIA PETROLEUM CO. v. HUNT*, 320 U. S. 430, SHOULD BE OVERRULED OR LIMITED AS TO APPLICATION, BECAUSE IT IS CONTRARY TO GENERALLY RECOGNIZED RULES IN COMPENSATION CASES, AND EXCEPTION TO FULL FAITH AND CREDIT REQUIREMENTS SHOULD BE MADE IN COMPENSATION CASES.

In the dissenting opinions of Mr. Justice Douglas and Mr. Justice Black, and the concurring opinion of Mr. Justice Jackson, cogent reasons are advanced against the correctness of the opinion of this Court in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430. Without repeating the arguments, it is respectfully suggested that the opinions be considered incorporated into this brief in support of the contention that *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, should be overruled, or at least limited as to application. The arguments here presented are intended as elaboration rather than repetition.

The majority opinion in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, indicated that § 403 of the Restatement of Conflict of Laws was intended "as nothing more than a statement of local rules of conflict of laws when unaffected by the full faith and credit clause" (footnote, p. 441). It is respectfully submitted, however, that the Restatement rule was intended to cover the general question of full faith and credit. The American Law Institute Proceedings, Vol. X, indicates that Mr. Wickersham, referring to "Section 440. Effect of Two Acts Governing Injury" and "Section 441. Effect of Previous Award," said:

> "The note is: 'It was, the Advisers believe, surprising to most lawyers when the first decision was made that the compensation acts of two states might

apply to the same injurious event. The question seems to be now settled in favor of the double liability by authority." The question is what is the general opinion of the bar on that subject?

"Member: Should there be a qualification of the subject that if the second state allows suit to be brought, they might limit the recovery.

"Mr. Beale: That is in the next Section, Section 441. As I understand it, the second state gives its award just as if there had been no prior award. They give that award and they then subtract from it anything that has actually been received by the claimant as a result of proceedings in another state or, as we had it in a Massachusetts case a while ago, as the result of private arrangement in another state" (pp. 76-77).

The fact that § 401 of the Restatement of Conflict of Laws "Abolition of Right of Action for Common Law Tort or Wrongful Death" considers under Comment "*b*" the "*Effect of Constitution of United States,*" justifies the conclusion that §§ 402 and 403 were also adopted with full consideration of the requirements of full faith and credit.

Moreover, the rule as stated in § 403 of the Restatement of Conflict of Laws has received general approval. Professor Beale in his Conflict of Laws, Volume Two, § 403.1 (1935), said:

"**Recovery after Recovery Abroad.**—Recovery may be had on the Act of the place of hiring although the injured person has already recovered, either on the Act or at common law, or has made composition, in the state of injury. After recovery in one state, suit may be brought in the other state; but in the judgment credit should be given for the amount already recovered" (pp. 1327-1328).

In "Workmen's Compensation and the Conflict of Laws —the Restatement and Other Recent Developments," by Ralph H. Dwan, 20 Minnesota Law Review 19, 41 (1936), Professor Dwan referred to § 403 of the Restatement, and then stated:

> "This is the only sensible way of handling the problem, and there is considerable authority to support it."

A note in 57 Harvard Law Review 242 (1943-1944), on "Conflict-of-Laws Provisions in Workmen's Compensation Acts," based on a paper written by Mr. Paul Deutschkron, former judge of the Court of Appeals in Stettin, Germany, states:

> "*Effect of a Previous Award.*—If the local act is applicable to intrastate injuries regardless of where the contract of employment is made or the regular employment is carried on, the injured worker may find a double remedy available. Apart from statutory or constitutional prohibition, it has been generally recognized that in such cases the workman may seek recovery under both acts, or under either act. In fact, it is not unusual for an employer after recovering an award in one state, to institute proceedings in another forum when he learns that the law of that state permits a higher compensation. An award under the local act of one state is not res judicata in a proceeding in another state, since it is based upon a compensation act different from the one upon which the new proceedings are grounded, but the recovery is limited to the highest amount that the workman would be entitled to receive under the act most favorable to him. Only one statute gives clear expression to this view, which is almost universally adopted by the courts of other jurisdictions, although several indicate that this result should be reached" (pp. 246-247).

The Supreme Court of Wisconsin, before the publication of the Restatement of Conflict of Laws, held that an award of compensation in another state did not preclude recovery in Wisconsin (*Interstate Power Co. v. Industrial Comm.*, 203 Wis. 466, 234 N. W. 889 (1931)), and when following that holding in a later case, referred to § 403 of the Restatement of Conflict of Laws (*Salvation Army v. Industrial Comm.*, 219 Wis. 343, 263 N. W. 349 (1935)). See opinion of Wisconsin Supreme Court in the instant case (R. 182-183; 248 Wis. 570, 572, 22 N. W. (2d) 522 (1946)).

Legal writers generally have expressed the opinion that the rule in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, constitutes a departure from the established rule in compensation cases. As stated by Samuel B. Horovitz in his recent treatise on "Injury and Death Under Workmen's Compensation Laws" (1944):

> "* * * This decision astounded experts on compensation. It flies in the face of many well-considered state decisions; it violates section 403 of the American Law Institute, Restatement of Conflicts of Laws; it negatives the works and treatises of many experts on the subject; and it will raise havoc with the future of compensation for workers who must traverse state lines" (p. 40).
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> See, also, pp. 40-44, *ibid.*

In comments on "Local Policy in the Conflict of Laws" in 38 Illinois Law Review 384, 390-391 (1943-1944), in considering *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, it is stated:

> "* * * In this case, it reversed the Louisiana courts and restricted the workman to a single recovery by

requiring strict adherence to the full faith and credit clause. The authority that existed prior to the Supreme Court's decision was overwhelmingly in favor of allowing the additional recovery. Many state statutes, state court decisions, the opinions of the foremost students of workmen's compensation, and the *Restatement of the Conflict of Laws* all advocated such schemes of recovery similar to the plan followed by the Louisiana courts."

See, also: "Workmen's Compensation Award—Commonplace or Anomaly in Full Faith and Credit Pattern?" by Paul A. Wolkin, 92 U. of Pa. Law Rev. (1943-44), 401, 410-411;

18 Tulane Law Review 509, 512-513, Notes.

Cf. "Reflections on Magnolia Petroleum Co. v. Hunt," by Harold Wright Holt, 30 Cornell Law Quarterly (1944-45), 160;

150 A. L. R. 431 (Annotation on "Award under workmen's compensation act as bar to, or ground for reduction of, claim under act of another state").

The opinion of this Court in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, was predicated in part on the theory that in compensation cases only one cause of action arises from one injury. It is respectfully submitted, however, that one injury may produce two entirely distinct causes of action. Paul A. Wolkin in his article on "Workmen's Compensation Award—Commonplace or Anomaly in Full Faith and Credit Pattern?" 92 U. of Pa. Law Rev. (1943-44) 401, 407, says:

"* * * The decisions in the *Alaska Packers* and *Pacific Employers* cases, conclusively establish that the

workmen's compensation conflict of laws situation is one of the instances in the conflict of laws where more than one state is constitutionally empowered to determine the legal consequences of a single event by the application of its internal law, as distinguished from its conflict of laws rule, governing the subject. The legal justification for this result is the power of each state to determine the consequences of events which transpire within its borders and in which it has a governmental interest. The factual justification is two sets of operative facts, one in each state. Common to both states is the relationship of employer and employee. Peculiar to each is the governmental interest in that relationship as determined by local industrial, social and economic conditions. In one state the relationship was created. In the other state the employee was injured. When, following an injury, the employee seeks compensation, in each state a different coterie of facts superimposed on a common base renders each act applicable. It would thus seem that each state is adjudicating something distinct and that the process of allowing an award in one state is not a determination which precludes an award, predicated on different facts which have not been litigated, in another state."

In *Alaska Packers Asso. v. Industrial Acci. Com.*, 294 U. S. 532, 541 (1935), this Court said:

"* * * the liability under workmen's compensation acts is not for a tort. It is imposed as an incident of the employment relationship, as a cost to be borne by the business enterprise, rather than as an attempt to extend redress for the wrongful act of the employer."

The mere occurrence of an injury in Wisconsin did not give rise to a cause of action in either Wisconsin or Illinois; liability under compensation laws is predicated on liability

without fault—and there is no intimation that the injury in the present case occurred because of any fault of the employer. A cause of action arose in Wisconsin because the Wisconsin Compensation Act imposed an obligation on the employer to make certain payments to the injured employee and the "state fund." Thus a statute-created cause of action arose in Wisconsin. The State of Illinois likewise created a cause of action in Illinois by requiring the employer, who had entered into a contract of employment in that state, to pay certain sums to satisfy the requirements of the Illinois Compensation Act. Thus two statutorily-created causes of action came into existence as the result of one accident. Wisconsin furnished a remedy for the Wisconsin cause of action, Illinois for the Illinois cause of action; and neither state furnished a remedy for the cause of action of the other state. Both states unquestionably had power to impose liability (*Alaska Packers Asso. v. Industrial Acci. Com.*, 294 U. S. 532, 540-541 (1935); *Pacific E. Ins. Co. v. Industrial Acci. Com.*, 306 U. S. 493, 500 (1939)). The causes of action were not mutually exclusive; a determination by Illinois, for instance, of a valid cause of action in that state was not inconsistent with the existence of a valid cause of action in Wisconsin. The situation presented was therefore entirely unlike that considered in *Chicago, R. I. & P. R. Co. v. Schendel*, 270 U. S. 611 (1926), where if the accident occurred in intrastate commerce the Iowa Compensation Act applied, while if it occurred in interstate commerce the Federal Employers' Liability Law applied. In that case there was a cause of action under *either* the Iowa Workmen's Compensation Act or the Federal Employers' Liability Law, but not both. In the present case there was a cause of action in Wisconsin

and a cause of action in Illinois, and neither cause of action was inconsistent with the existence of the other. If the Illinois cause of action is distinct from the Wisconsin cause of action, then, notwithstanding a prior adjudication of the Illinois cause of action, Wisconsin is free to adjudicate its cause of action without violating the full faith and credit clause.

There are potent, practical considerations for holding that one accident may produce multiple causes of action. Cases arise where the employer has insurance coverage in one state and not in another. If an employee should be awarded compensation in the state without insurance coverage, insolvency of the employer might make the award worthless; still, if the award barred further proceedings in the state having insurance coverage, the employee or his dependents would be deprived of all compensation. Moreover, an insurance carrier which collects premiums for the payment of compensation under the laws of State A. should not be relieved from its contractual obligation merely because the employee received an award, possibly uncollectible, in State B. Even if the same insurance carrier covered liability in two states, payment of the award in the state allowing the smaller compensation benefits would not constitute compliance with the obligation to pay the higher benefits allowed in the other state. No injustice results from requiring the insurance carrier to comply with the compensation laws of both states, for the credit given for compensation paid under the first award prevents an imposition of liability in excess of the maximum assumed.

In *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 438, this Court said:

"* * * Even though we assume for present purposes that the command of the Constitution and the statute is not all-embracing, and that there may be exceptional cases in which the judgment of one state may not override the laws and policy of another, this Court is the final arbiter of the extent of the exceptions. *Alaska Packers Assn.* v. *Industrial Accident Comm'n, supra,* 547; *Titus* v. *Wallick, supra,* 291. And we pointed out in *Williams* v. *North Carolina, supra,* 294-295, that 'the actual exceptions have been few and far between. . . .'"

There are persuasive reasons why an exception to the full faith and credit rules should be created in workmen's compensation cases. These reasons are set forth in the scholarly article by Elliott E. Cheatham on "Res Judicata and the Full Faith and Credit Clause: Magnolia Petroleum Co. v. Hunt," 44 Columbia Law Review (1944) 330, 342-345:

"Are there in the setting of this case or in the operation of the Texas judgment any grounds for an exception? If so, it should be firmly based, for the Court is asked to create an exception to a requirement which comes from the Constitution and the federal statute. In recent years the Court has been opposed to encroachments on the rule of full credit. It has struck down some supposed old exceptions and has questioned others."

"When the setting and nature of workmen's com-

"40. It has struck down the defenses of public policy [Fauntleroy v. Lum, 210 U. S. 230 (1908)], of an attempted

pensation are considered, several factors appear which may well be thought to call for exceptional treatment, and four will be mentioned.

"1. The party seeking relief is a member of the necessitous class, injured workmen, which in many branches of our law has received special treatment. The existence of state workmen's compensation statutes with all of their protective measures is the clearest example. In the field of admiralty, the courts developed the beneficent attitude that seamen are wards of the admiralty," and Congress enacted a workmen's compensation statute protecting harbor workers." In dealing with the difficult and much-litigated question as to when a harbor worker comes within the jurisdiction of admiralty and so within the federal statute and when within a state workmen's compensation act, which are mutually exclusive by the terms of the federal statute, the Supreme Court laid down a year ago a rule of reconciliation which seems in the border line

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denial by a state of jurisdiction to its courts over the action on the judgment [Kenney v. Supreme Lodge of the World, 252 U. S. 411 (1920)], of a statute of limitations directed to the original cause of action [Roche v. McDonald, 275 U. S. 449 (1928)], of fiscal cause of action [Milwaukee County v. M. E. White Co., 296 U. S. 268 (1935)]. It has questioned the validity of the defense of penal law. Milwaukee County v. White, *supra*, at 275; Magnolia Petroleum Co. v. Hunt, *supra*, at 213.

"41. The James H. Shrigley, 50 F. 287 (N. D. N. Y. 1892). For application of this attitude, see Calmar S. S. Corporation v. Taylor, 303 U. S. 525 (1938); Socony-Vacuum Oil Co. v. Smith, 305 U. S. 424 (1939).

"42. Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424 (1927), 33 U. S. C. I. §§ 901 *et seq.* (1940).

cases to uphold relief under either statute.' This result, with possible wide application to situations where the competing federal and state statutes have similar objectives, bears an obvious analogy to the Supreme Court's treatment of usury cases in conflict of laws, for it is a rule in the alternative favoring the party whom the Court believes should be aided."[43a]

"2. Workmen's compensation statutes are addressed to a continuing situation, involving the burden of support of a person unable to support himself, and in this situation the home state of the worker has the special interest which the Supreme Court has many times recognized. An analogous situation is the duty of support owed by father to child, by husband to wife. In the case of father and child, the Supreme Court has held that a judgment of the state of the father's domicil adjudicating and terminating his duty of support must be given full credit in other states, but the court reserved the question of the effect of the judgment if the father later became domiciled in the state of the second forum." Justice Stone in a fine dissent urged the judgment should not be conclusive for the future on a state in which the child later became domiciled, and cited as analogous the cases involving the custody of children whose domicil changes."[45]

"43. Davis v. Department of Labor, 317 U. S. 249 (1942).

"43a. Professor Beale gave his support to special conflict of laws rules for claims of injured employees and applauded 'the emergence of a distinctly sociological jurisprudence in the decisions of the Supreme Court.' Beale, *Social Justice and Business Costs—A Study in the Legal History of Today* (1936) 49 Harv. L. Rev. 593, 608.

"44. Yarborough v. Yarborough, 290 U. S. 202 (1933).

"45. Apparently, it was with this principle in mind that Justice Douglas wrote in his special dissent: 'The most charitable construction is that Texas undertook to adjust

"3. Workmen's compensation proceedings differ in an important respect, as Justice Black points out," from the proceedings in which the court heretofore has considered the effect of a judgment or award. In the ordinary action at law or in equity, the forum may use the law of some other state and give relief in the measure prescribed by that law. This is not true of workmen's compensation in most states, for it is enforced by an administrative commission which will apply only its own statutes. Though the commission may believe another state's connection with the occurrence and the parties is more important than its own, and though it would prefer to give the relief prescribed by the statute of the other state, it can not do so. In the present case the Texas Commission apparently deemed itself unable to give the Louisiana measure of relief even if it wished to do so." So this workman had his claim first adjudicated by a commission which could not give any consideration to his more liberal rights under the Louisiana statute. It may fairly be said, therefore, that he never had the opportunity in that proceeding for a hearing of his full case."

"4. Adherence to the rule of the principal case may give the employer or his insurance company an opportunity for overreaching. The employer is better informed than the employee on the laws of the states. He may press for an early award in the state with the lowest scale of compensation, and thus reduce his obli-

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the rights and duties of the parties and to regulate their relationship only so long as they remained subject to the jurisdiction of Texas.' 64 Sup. Ct. 208, 218.

"46. 64 Sup. Ct. 220.

"47. The rights under the Louisiana statute are enforceable in court. But the Texas commission did not consider those rights could be enforced by it.

"48. Such a factor may keep the rule against splitting a cause of action from applying at all. Restatement,

gation. This shopping around by the employer for the state which will give the employee the least should be made impossible."

"These considerations show that exceptional treatment of workmen's compensation awards may be wise. They have induced the majority of the states which have dealt with the matter to allow a second, supplemental award.[50] It is the function of the Supreme

---

Judgments (1942) § 62, after giving the general rule, lists the exceptions to it, one of which is,

> 'except (a) where the procedure adopted by the plaintiff precluded his recovery for the entire claim and this procedure was essential to preserving his rights. . .'

And in Comment *k* to the Section a conflict of laws illustration is given:

> '. . . where a plaintiff brings an action in a State in which the courts have jurisdiction only with reference to one portion of his cause of action, he is not barred from maintaining an action in a proper court for the other portion. Thus, if the defendant enters on the plaintiff's land in one State and cuts and carries off trees, and the plaintiff sues in another State for conversion of the trees, he is not precluded from bringing an action for trespass to the land in the State where the land lies, if he could not have maintained an action for trespass to the land in the State in which the action for conversion was brought.'

"49. There seems to have been no hurried action in the principal case. The final award in Texas was not entered until a year and a half after the injury was suffered. It was, however, pressed to a conclusion at the suit of the insurance carrier, instead of the workman.

"50. The decisions are collected and discussed in the majority and minority opinions in the principal case."

Court to weigh the factors and to determine whether a departure from the usual requirements of full credit is justified."

Conclusion

It is respectfully submitted that the judgment of the Supreme Court of Wisconsin should be reversed.

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MORTIMER LEVITAN,
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Counsel for Petitioners, Industrial Commission of Wisconsin and State of Wisconsin,

I hereby join in the above brief.

LEO THOMAS KOPP,
Pro Se.

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Supreme Court of the United States

October Term, 1946

No. 270

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN,
Petitioners,

vs.

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, A Corporation

---

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUBJECT INDEX

Page

I. Statement of the Case 1

II. Argument 3

Summary of Argument 3

A. The Wisconsin Court Decided the Only Federal Question of Substance in Accord With the Decision of This Court in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, and no Valid Reason for Departing From or Re-examining the Rule Announced in That Case is Suggested by Petitioners 4-6

B. Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is Directly Applicable and the Record in This Case Brings the Case Within the Rule Announced in That Case 7-8

C. The Decision in Magnolia Petroleum Co. v. Hunt is Not Inapplicable Because of Language in the Illinois Settlement Contract Relating to Rights Under the Wisconsin Compensation Act 9-10

D. Magnolia Petroleum Co. v. Hunt is Applicable Even Though This Court Stated in its Opinion That it Had No Occasion to Consider Effect to be Given to Texas Award if the Texas Courts Held That An Award of Compensation in Another State Would Not Bar An Award in Texas 11-12

E. The Provisions in the Wisconsin Compensation Act for Payment of $75 Into the State Treasury for a Second Injury Fund Do Not Constitute

Page

Sufficient Grounds for Creation of An Exception to the Requirement of the Full Faith and Credit Clause 12-13

III. Conclusion 13

TABLE OF AUTHORITIES CITED

TABLE OF CASES CITED

Adam v. Saenger, 303 U. S. 59 11

Centralia Coal Co. v. Industrial Comm., 297 Ill. 451, 130 N. E. 727 8

Cincinnati v. Vester, 281 U. S. 439 5

Cole v. Industrial Commission, 353 Ill. 415, 187 N. E. 520 11

Hartford Accident & Indemnity Co. v. Industrial Comm., 320 Ill. 544, 151 N. E. 495 8

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430 ..... 3, 4, 5, 6, 7, 9, 11, 12

Michelson v. Industrial Commission, 375 Ill. 462, 31 N. E. 2d 940 8

Moore Ice Cream Co. v. Rose, 289 U. S. 373 5

Stromberg Motor Device Co. v. Industrial Comm., 305 Ill. 619, 137 N. E. 462 8

Tennessee Publishing Co. v. American Nat. Bank, 299 U. S. 18 5

Page

Williams v. North Carolina, 317 U. S. 287 13

Williams v. North Carolina, 325 U. S. 226 6

TABLE OF STATUTES CITED

Illinois Workmen's Compensation Act, Section 3 (Ill. Rev. Stat., 1943, Chapter 48, Sec. 139) 7-8

Illinois Workmen's Compensation Act, Section 6 (Ill. Rev. Stat., 1943, Chapter 48, Sec. 143) 7

Illinois Workmen's Compensation Act, Section 11 (Ill. Rev. Stat., 1943, Chapter 48, Sec. 148) 7

Wisconsin Statutes, 1943, Section 102.59 (2) 12

MISCELLANEOUS

American Law Reports, Annotated, Volume 150, page 431 6

Full Faith and Credit Clause of United States Constitution (Art. IV, Sec. 1) 4

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vs.

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, A Corporation

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

We desire to supplement Petitioners' "Statement of the Case" by a further reference to the proceedings before the Illinois Commission. The record discloses that on July 20, 1943, Kopp filed an application for adjustment of claim with the Illinois Industrial Commission. (R. 148-151) Under the Illinois practice cases may be submitted to the Illinois Commission on what is known as a "settlement contract." That practice was followed in this case and on November 29, 1943, a settlement contract was filed with the Illinois Commission. (R. 186) On December 3, 1943, (R. 137, 163) a hearing was held before a member of the Illinois Commission at which time the question of approval

of the settlement contract and also the approval of a petition for lump sum payment filed by Kopp (R. 155-157) were considered. (R. 165) . The settlement contract was approved by the Illinois Commission on December 3, 1943. (R. 186) Under the Illinois law, the settlement contract became "in legal effect an award," upon its approval by the Illinois Commission.

A copy of the testimony taken and the proceedings had when the question of approval of the settlement contract was considered by the Illinois Industrial Commission is set forth in full in the Transcript of Record in this case at pages 164 to 168. It will be noted that the member of the Illinois Commission who heard the matter advised Kopp that he knew nothing about his rights in Wisconsin and could not say that he would be protected in Wisconsin and that Kopp replied that he would take his chances in Wisconsin. (R. 166-168)

ARGUMENT

Summary of Argument

A. The Wisconsin court decided the only Federal question of substance involved in this case in accord with the decision of this Court in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430. Petitioners' contention that language used in the settlement contract renders the *Magnolia Case* inapplicable raises no Federal question of substance. No valid reason for departing from or re-examining the rule announced in the Magnolia Case is suggested by Petitioners.

B. The proceedings had in Illinois and the Illinois award resulting from approval of the Illinois settlement contract resulted in a final adjudication of Kopp's rights under the Illinois Act and the record in this case brings the case squarely within the rule announced in the *Magnolia Petroleum Company Case.*

C. The fact that in the Illinois settlement contract it was provided that "this settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin" does not make the *Magnolia Case* inapplicable. This language did not constitute an agreement that Kopp had or after the Illinois proceedings would have any rights in Wisconsin. Wisconsin is required to give the same faith and credit to the Illinois award to which it is entitled in that state.

D. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is applicable even though this court stated in its opinion that it had no occasion to consider the effect to be given to the Texas award there involved if the Texas courts held that an award of compensation in another state would not bar an award in Texas. Illinois has not held that it would grant a second award. Any other result would do violence

to the full faith and credit clause and make it possible for the states to nullify this important constitutional provision.

E. The provisions in the Wisconsin Compensation Act for payment of $75 into the state treasury for a second injury fund do not constitute sufficient grounds for creation of an exception to the requirement of the full faith and credit clause.

A.

The Wisconsin Court Decided the Only Federal Question of Substance Involved In This Case In Accord With the Decision of This Court In Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, and No Valid Reason for Departing From or Re-examining the Rule Announced in That Case is Suggested by Petitioners.

We respectfully submit that the only Federal question of substance presented in the present case is whether the full faith and credit clause of the Constitution of the United States (Sec. 1 of Art. IV) has deprived Wisconsin of the power to deny that the Illinois award has the same binding effect on the parties in Wisconsin as it has in Illinois. Petitioners concede that the question was determined by this Court in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, but seek to invoke the jurisdiction of this Court by reason of the claimed effect of the statement in the Illinois settlement contract that the settlement does not effect rights under the Wisconsin Act. As we will point out under section C of this brief it is our position that this language does not render the decision in the *Magnolia Case* inapplicable. How-

ever, it is further our position that Petitioners' contention raises no Federal question of public importance. Petitioners ask this Court to go back of the Illinois award and construe a contract. A construction of the language of the contract alone would not be sufficient but it would also be necessary for the court to consider all of the facts and circumstances peculiar to this case. We respectfully submit that this would require the Court to consider and decide questions which are not of public importance.

Petitioners suggest that the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, should be re-examined and the limits of its application indicated. It is our position that the *Magnolia Case* is directly applicable in the present case. No definition of the limits of the application of the decision in that case is necessary in order to dispose of the present case. Petitioners' suggestion that this Court should define the limits of the application of the rule in the *Magnolia Case* amounts to a request to the Court to go beyond the record in the present case and consider questions not presented by the record. This cannot be done under the established principal governing the exercise of the jurisdiction of this Court that it will not decide constitutional questions unnecessarily or hypothetically and will not anticipate the decision of a constitutional question upon a record that does not present it.

Tennessee Publishing Co. v. American Nat. Bank, 299 U. S. 18.

Cincinnati v. Vester, 281 U. S. 439.

Moore Ice Cream Co. v. Rose, 289 U. S. 373.

In their brief (pages 17-18) Petitioners further suggest that the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, should be re-examined because "it seems to oppose directly the generally accepted practice." Petitioners do not suggest that the decision is opposed to any "accepted practice" approved by this Court which is the final arbiter of the question presented. In order to avoid unduly extending this brief by the citation of many cases we call the Court's attention to the exhaustive annotation in 150 *American Law Reports, Annotated*, 431 in which the author cites many cases in support of his conclusion that the decision in the *Magnolia Petroleum Co. Case* is in accord with "the prevailing trend of recent cases."

We find no conflict between the *Magnolia Case* and *Williams v. North Carolina*, 325 U. S. 226, as suggested by Petitioners. In its opinion in the *Williams Case*, this Court gave full recognition to the rule announced in the *Magnolia Petroleum Co. Case* and was there only concerned with questions not presented in the present case because no claim of lack of jurisdiction on the part of Illinois to adjudicate Kopp's right to be paid workmen's compensation has been made by Petitioners.

B.

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is Directly Applicable and the Record in This Case Brings the Case Within the Rule Announced in That Case.

We respectfully submit that the record in the present case presents a situation exactly similar to the situation presented in the *Magnolia Case*. By its terms the Illinois Compensation Act provides an exclusive remedy to an injured employee. Section 6 of the Illinois Act (Sec. 143 of Chapter 48, Ill. Rev. Stat. 1943) provides as follows:

> "No common law or statutory right to recover damages for injury or death sustained by an employee while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury. * * *."

Section 11 of the Illinois Act (Sec. 148 of Chapter 48, Ill. Rev. Stat. 1943) provides that:

> "The compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility of any employer engaged in any of the enterprises or business enumerated in section three (3) of this Act. * * *."

Section 3 of the Illinois Act (Sec. 139 of Chapter 48, Ill. Rev. Stat. 1943) enumerates "The erection, maintaining, removing, remodeling, altering or demolishing of any

structure." At the time he was injured Kopp was doing mason work in connection with the erection of houses in Beloit, Wisconsin. (R. 134)

Under the Illinois law a settlement contract approved by the Industrial Commission is in legal effect an award.

Hartford Accident & Indemnity Co. v. Industrial Comm., 320 Ill. 544, 151 N. E. 495.

Kopp not only obtained what in Illinois was in legal effect an award but he also applied for and obtained an order approving a lump sum settlement. (R. 155, 161.) The "Lump Sum Settlement Order" (R. 161-162) is of importance in this case because under the Illinois law a lump sum settlement prevents the employee from thereafter obtaining a review of an agreement or award fixing the amount of his compensation. *Michelson v. Industrial Commission*, 375 Ill. 462, 31 N. E. 2d 940. In any event it is admitted that Kopp did not commence an action to review the decision of the Illinois Commission approving the settlement contract. (R. 141) It should also be noted that awards of the Illinois Commission are res judicata in that state.

Centralia Coal Co. v. Industrial Comm., 297 Ill. 451, 130 N. E. 727.

Stromberg Motor Device Co. v. Industrial Comm., 305 Ill. 619, 137 N. E. 462.

There can be no question but what the Illinois proceedings and award resulted in a final adjudication of Kopp's right to compensation for his injuries under the Illinois Workmen's Compensation Act and prevented any further

claim of any kind in Illinois. No claim that Kopp has any further rights in Illinois is made by Petitioners. This, we submit, brings the case squarely within the rule announced in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430.

C.

The Decision in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is Not Inapplicable Because of Language In the Illinois Settlement Contract Relating to Rights Under the Wisconsin Compensation Act.

In their brief in support of their petition for a writ of certiorari Petitioners have taken the position that the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is inapplicable because the Illinois award was "based" on a settlement contract which contained the following provision: "This settlement does not affect any rights that applicant (Kopp) may have under the Workmen's Compensation Act of the State of Wisconsin." (R. 152) As we have stated in section A of this brief it is our position that this contention raises no Federal question of substance. It is further our position that Petitioners' position has no merit in any event. The effect of the language quoted from the Illinois settlement contract was referred to and considered by the Wisconsin court in its opinion. (R. 184-185) It should be noted, however, that the precise question now raised by Petitioners was neither considered nor decided by the Wisconsin court.

In their brief (page 12) Petitioners argue that the approved settlement contract became in legal effect an

award reserving rights under the Wisconsin Compensation Act. It will be noted, however, that the language relied upon by Petitioners refers only to rights that Kopp "may" have under the Workmen's Compensation Act of Wisconsin. Certainly the language cannot be construed as an acknowledgment or agreement that Kopp then had or in the future would have any rights under the Wisconsin Act. When this contract was executed the parties were interested only in disposing of Kopp's rights under the Illinois Act. This is plain from the last paragraph of the contract wherein Kopp agreed to settle and adjust all claims under the Workmen's Compensation Act of Illinois for a stipulated amount. (R. 153) When the contract was submitted to the Illinois Commission for approval, the Illinois Commission was concerned only with Kopp's rights under the Illinois Act. The Commissioner who heard the matter so advised Kopp and specifically told him that he did not know whether he would have any further rights in Wisconsin after his case was "closed out in another state." Kopp then replied that he would "take chances on Wisconsin." (R. 163-168) It is obvious that the Illinois Commission had no power to adjudicate Kopp's rights under the Workmen's Compensation Act of Wisconsin and no power to limit the requirement of the full faith and credit clause that its award be given the same res judicata effect in Wisconsin to which it is entitled in Illinois.

We submit that a complete answer to Petitioners' argument is found in the fact that Wisconsin is required to give the same faith and credit to the Illinois proceedings and award as they have by law or usage in the courts of

Illinois where they are held to be a full and final adjudication of Kopp's right to compensation for his injuries.

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430 at 437-438.

Adam v. Saenger, 303 U. S. 59 at 62.

D.

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is Applicable Even Though This Court Stated In Its Opinion That It Had No Occasion to Consider Effect To Be Given To Texas Award If the Texas Courts Held That An Award of Compensation In Another State Would Not Bar An Award In Texas.

It is true that Illinois has no statute similar to the Texas statute which provides that a compensation award may not be had in Texas if the employee has claimed and received compensation for his injury under the laws of another state. (See reference to this statute 320 U. S. at page 435.) However, it is also true that Illinois has never held that an award of compensation in another state would not bar a second award in Illinois. In the absence of such holding by Illinois we submit that there is no merit to Petitioners' argument under "Point B" in their brief. (Pages 14-15) In addition we call attention to the fact that Illinois has recognized the exclusiveness of the remedy afforded by the compensation law of another state. In *Cole v. Industrial Commission*, 353 Ill. 415, 187 N. E. 520, the Illinois court said:

"The contract of employment herein having been entered into in the state of Indiana between parties

who were subject to the terms of the Indiana Compensation Act, the provisions of the act for an exclusive remedy under it must prevail."

We respectfully submit that every reason which impelled this Court to hold in the *Magnolia Case* that a second recovery could not be had in Louisiana for the same injury for which the employee had previously received compensation in Texas would have applied with equal force even if Texas had permitted a second recovery. The Wisconsin court so held in this case. (R. 185) Any other result would do violence to the full faith and credit clause and make it possible for the states to nullify this important constitutional provision by statutes or decisions of its courts.

E.

The Provisions In the Wisconsin Compensation Act for Payment of $75 Into the State Treasury for a Second Injury Fund Do Not Constitute Sufficient Grounds for Creation of An Exception To the Requirement of the Full Faith and Credit Clause.

It will be noted that sub-sec. (2) of sec. 102.59, Wisconsin Statutes, 1943, provides that "in case of * * * the total impairment of a * * * eye, the employer shall be required to pay seventy-five dollars into the state treasury." (See other statutes relating to the so-called second injury fund quoted at page 16 of Petitioners' brief.) This statute, therefore, only provides for a payment into the state treasury where there is a total impairment of an eye. No finding of total impairment of eye has been made in

this case. No medical testimony was presented at the hearing before the Wisconsin Industrial Commission. (R. 122) That commission found that no removal of the cataract had been attempted, "that the ultimate impairment of vision, if such removal were attempted, is unknown," and reserved the question of payment into the state fund until determination of the permanent impairment of vision. (R. 122-123)

This Court has stated that actual exceptions to the requirement of the full faith and credit clause "have been few and far between." *Williams v. North Carolina*, 317 U. S. 287 at pages 294-295. Petitioners have cited no cases in support of their contention that the claimed interest of the State of Wisconsin in this case constitutes sufficient grounds for creation of an exception to the full faith and credit clause and we have found none. We respectfully submit that in no event could a mere possibility that Wisconsin may have an interest to the extent of seventy-five dollars be relied upon as creating an exception to this clause. Here again Petitioners ask this Court to grant their petition in order to consider a question that does not now exist and may never come into existence.

At page 17 of their brief Petitioners suggest that the problem under the full faith and credit clause is to accommodate the conflicting interests of the two states. If this be true, we submit that the interest of Illinois arising from its responsibility to furnish relief and care to residents of its state who are incapacitated by injuries is far greater than any interest that Wisconsin could have by reason of its requirement that in selected cases a contribution must be made to its second injury fund.

CONCLUSION

It is, therefore, respectfully submitted that this case is not a proper one for review by certiorari in this court, and that the petition for a writ of certiorari should be denied.

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Brief of Respondents

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SUBJECT INDEX

	Page
SUMMARY OF ARGUMENT	1
ARGUMENT	2
A. *The decision in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is directly applicable and controlling in the present case*	2
—Situation presented in present case exactly similar to situation presented in *Magnolia Case*	2
—The Illinois Workmen's Compensation Act provides an exclusive remedy which is "measure of responsibility" of employer	3-4
—A compensation award is res judicata in Illinois	4-5
—Lump sum settlement order made Illinois proceedings final and conclusive	6
B. *The applicability of the decision in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is not affected by the language of the Illinois settlement contract*	7
—Clause in settlement contract relating to rights under Wisconsin Act means only that if after obtaining full recovery in Illinois Mr. Kopp had additional rights in Wisconsin, the settlement contract could not be relied upon as in nature of a release of such rights	7-8
—Settlement contract refers only to rights Mr. Kopp "may" have in Wisconsin	8

Page

—State court correctly held that parties merely agreed that if Mr. Kopp had any legal rights which he could establish in Wisconsin it was his privilege to do so 8-9

—Approval of settlement contract resulted in an award 9

—Illinois Commission lacked power to enter an award reserving rights under laws of any other states and its award did not have that effect 10

—Comments of Illinois commissioner at hearing indicate that Illinois did not attempt to reserve rights in its award 10-11

—The inclusion of a reservation of rights in Wisconsin would not affect binding effect of award in Illinois and Wisconsin required to give same faith and credit as award entitled in Illinois 12-13

—No splitting of a cause of action is involved in this case 14

—Mr. Kopp did not seek recovery of part of claim in Illinois but rather obtained settlement of full claim in that state 14

—When he proceeded in Illinois Mr. Kopp merely chose his remedy 15

Page

C. *Illinois has not held that it will allow an award notwithstanding a previous award in another state and in any event the full faith and credit clause would preclude a second award in Illinois if (as in the present case) the first award was res judicata in the state where rendered* 16

—Illinois has not held that it will grant a second award 16

—Full faith and credit clause would preclude second award in Illinois 17

—Therefore question reserved in *Magnolia Case* may also be reserved in this case 17

D. *The provision in Wisconsin Compensation Act for payment of $75 into State Treasury for "second injury" fund does not constitute sufficient grounds for creation of an exception to the requirements of the full faith and credit clause* 18

—There has been no finding of total impairment of an eye in this case 18-19

—The Wisconsin Commission reserved question of payment to state fund in its award 19

—No claim for payment to state fund was made until after hearing and that question was not raised at the hearing 19

—Therefore petitioners rely upon a mere possibility to create exceptions to full faith and credit requirements 19

Page

—Actual exceptions to full faith and credit requirements have been "few and far between" 19

E. *The decision in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is based on sound legal principles and should not be overruled or limited* 22

—The decision in the *Magnolia Case* is in accord with prevailing trend of recent cases 22

—State court decisions prior to *Magnolia Case* can not be relied upon as establishing correct policy 23

—Question not settled until presented to and decided by this court 23

—Petitioners present no convincing reasons in support of contention that two causes of action resulted in this case 24

—Petitioners concede that Illinois award is entitled to "some" faith and credit 24

—It follows that Illinois award is entitled to full faith and credit 24

—Petitioners have assigned no persuasive reasons for creating exceptions in workmen's compensation cases 25

—One of purposes of workmen's compensation acts is to provide a limited and determinate liability for employers 26

—The employer acquired valuable rights in Illinois which are of importance and entitled to protection 26

TABLE OF CASES CITED

Page

Alaska Packers Asso. v. Industrial Acci. Commission, 294 U. S. 532, 547 23

Bradford Electric Light Co. v. Clapper, 286 U. S. 145 26

Brewerton Coal Co. v. Industrial Comm., 324 Ill. 89, 154 N. E. 412 5

Centralia Coal Co. v. Industrial Comm., 297 Ill. 451, 130 N. E. 727 5

Davis v. Davis, 305 U. S. 32 ..... 13, 24

Hartford Accident & Indemnity Co. v. Industrial Comm., 320 Ill. 544, 151 N. E. 495 ..... 4, 9

Interstate Power Co. v. Industrial Comm., 203 Wis. 466, 234 N. W. 889 21

Lewin Metals Corporation v. Industrial Comm., 360 Ill. 371, 196 N. E. 482 5

Loucks v. Standard Oil Co., 224 N. Y. 99, 120 N. E. 198 26

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430 ..... 2, 3, 6, 7, 10, 12, 14, 15, 17, 20, 22, 23, 24

Michelson v. Industrial Comm., 375 Ill. 462, 31 N. E. 2d 940 6

New York L. Ins. Co. v. Head, 234 U. S. 149 10

Stromberg Motor Device Co. v. Industrial Comm., 305 Ill. 619, 137 N. E. 462 5

Page

Thompson v. Industrial Comm., 351 Ill. 356, 184 N. E. 633 5

Titus v. Wallick, 306 U. S. 282, 291 23

Trigg v. Industrial Comm., 364 Ill. 581, 5 N. E. 2d 394 5

Williams v. North Carolina, 317 U. S. 287 ..... 13, 19

CONSTITUTIONAL PROVISIONS AND STATUTES

The Constitution of the United States:

Article IV, Section 1 3

United States Statutes:

Act of May 26, 1790, c. 11, 1 Stat. 122, as amended 3

28 U. S. C. A. 687 3

Illinois Statutes:

Sec. 3 of Workmen's Compensation Act (Ill. Rev. Stat. 1943, Sec. 130) 4

Sec. 6 of Workmen's Compensation Act (Ill. Rev. Stat. 1943, Sec. 143) 3

Sec. 8(e) of Workmen's Compensation Act (Ill. Rev. Stat. 1943, Sec. 145(e)) 7

Sec. 11 of Workmen's Compensation Act (Ill. Rev. Stat. 1943, Sec. 148) 4, 26

Sec. 15 of Workmen's Compensation Act (Ill. Rev. Stat. 1943, Sec. 152) 10

Sec. 19(h) of Workmen's Compensation Act (Ill. Rev. Stat. 1943, Sec. 156(h)) 5

	Page
Wisconsin Statutes:	
Sec. 102.03(2) Wis. Stat. 1943	27
Sec. 102.59(2) Wis. Stat. 1943	18

MISCELLANEOUS

American Jurisprudence, Vol. 1, page 458	24
American Law Reports, Vol. 101, page 1445	23
American Law Reports, Vol. 150, page 431	22, 23
Restatement of Conflict of Laws, Sec. 403	23

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SUMMARY OF ARGUMENT

A. The decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is directly applicable and controlling in the present case.

B. The applicability of the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is not affected by the language of the Illinois settlement contract.

C. Illinois has not held that it will allow an award notwithstanding a previous award in another state and in any event the full faith and credit clause would preclude a second award in Illinois if (as in the present case) the first award was res judicata in the state where rendered.

D. The provision in Wisconsin Compensation Act for payment of $75 into State Treasury for "second injury" fund does not constitute sufficient grounds for creation of an exception to the requirements of the full faith and credit clause.

E. The decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is based on sound legal principles and should not be overruled or limited.

ARGUMENT

A.

THE DECISION IN *MAGNOLIA PETROLEUM CO. v. HUNT*, 320 U. S. 430, IS DIRECTLY APPLICABLE AND CONTROLLING IN THE PRESENT CASE

In *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, this court recently held that an award of workmen's compensation in the state in which the injury was sustained, the effect of which in such state is to bar further recovery, bars a further recovery for the same injury under the workmen's compensation law of the state of employment, of which the employer and the injured employee are residents. The situation presented in the *Magnolia Case* is exactly similar to the situation presented in the present case except that in this case the first award was entered in the state of employment (Illinois) where both the employer and employee resided. It is respondents' position that the *Magnolia Case* is directly applicable and controlling in the present case.

The decision in the *Magnolia Case*, supra, is based upon Article IV, Section 1 of the Federal Constitution, which provides that:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other state. And the Congress may by general Laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

and upon the Act of May 26, 1790 (1 Stat. 122, 28 USCA 687) providing that judgments

> "* * * shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

Petitioners suggest only three reasons why the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is not applicable in the present case. In the interest of brevity we will refrain from setting forth in detail the reasons why the decision does apply. We feel that these reasons sufficiently appear from the statement of facts and the argument on other points. However, for the assistance of the court we do desire to briefly point out the principles of Illinois law which make the decision applicable.

By its terms the Illinois Act provides an exclusive remedy to an injured employee. Section 6 of the Illinois Act (Sec. 143 of Chap. 48, Ill. Rev. Stat. 1943) provides as follows:

> "No common law or statutory right to recover damages for injury or death sustained by an employee

while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury. * * *"

Section 11 of the Illinois Act (Sec. 148 of Chap. 48, Ill. Rev. Stat. 1943) provides that:

"The compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility of any employer engaged in any of the enterprises or business enumerated in section three (3) of this Act. * * *"

Section 3 of the Illinois Act (Sec. 130 of Chap. 48, Ill. Rev. Stat. 1943) enumerates (1) "The erection, maintaining, removing, remodeling, altering or demolishing of any structure" and (2) "Construction, excavating or demolishing any structure." At the time he was injured Kopp was doing mason work in connection with the erection of houses in Beloit, Wisconsin. (R. 134)

The settlement contract entered into between Mr. Kopp and his employer was approved by the Illinois Industrial Commission on December 3, 1943. (R. 186) This resulted in an "award" under the Illinois law. *Hartford Accident & Indemnity Co. v. Industrial Comm.*, 320 Ill. 544; 151 N. E. 495. Under the settled law of Illinois an award of its Industrial Commission is a final and conclusive adjudication of the right of the injured employee to compensation for his injuries and res judicata in that state. The Illinois court has specifically so held in the following cases:

Centralia Coal Co. v. Industrial Comm., 297 Ill. 451, 130 N. E. 727.

Stromberg Motor Device Co. v. Industrial Comm., 305 Ill. 619, 137 N. E. 462.

The following cases further illustrate the conclusiveness of compensation awards in Illinois:

Trigg v. Industrial Comm., 364 Ill. 581, 5 N. E. 2d 394.

Brewerton Coal Co. v. Industrial Comm., 324 Ill. 89, 154 N. E. 412.

Thompson v. Industrial Comm., 351 Ill. 356, 184 N. E. 633.

Lewin Metals Corporation v. Industrial Comm., 360 Ill. 371, 196 N. E. 482.

Mr. Kopp not only obtained what in Illinois was in "legal effect an award" but he also petitioned for and obtained a "lump sum settlement order" which provided for payment of his award in a lump sum. (R. 155-157, 161-162) This is of importance in this case because Section 19(h) of the Illinois Workmen's Compensation Act (Sec. 156(h) of Chap. 48, Ill. Rev. Stat. 1943), which provides that the Illinois Industrial Commission may review an agreement or award providing for compensation in installments at any time within eighteen months after such agreement or award, contains the following provision:

"* * * Provided, further, that when compensation which is payable in accordance with an award or settlement contract approved by the Industrial Commission, is ordered paid in a lump sum by the Commission no review shall be had as in this paragraph mentioned."

See also *Michelson v. Industrial Comm.*, 375 Ill. 462, 31 N. E. 2d. 940, in which the Illinois Court held that paragraph (h) of Section 19 of the Illinois Act made it impossible for the Illinois Commission to review a lump sum settlement order.

We do not claim, as suggested by petitioners at page 8 of their brief, that the lump sum settlement order entered by the Illinois Commission in this case changed any of the provisions of the award resulting from the approval of the settlement contract. We do submit, however, that this order constitutes another reason why the Illinois proceedings resulted in a final and conclusive determination of Mr. Kopp's rights.

We submit that it clearly appears from the foregoing that the Illinois proceedings resulted in an award of compensation which was res judicata in Illinois and that the following statement in the opinion in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 444, is therefore applicable:

> "Respondent (in this case Kopp) was free to pursue his remedy in either state but having chosen to seek it in Texas (in this case Illinois), where the award was res judicata, the full faith and credit clause precludes him from again seeking a remedy in Louisiana (in this case Wisconsin) upon the same grounds."

B.

THE APPLICABILITY OF THE DECISION IN *MAGNOLIA PETROLEUM CO. v. HUNT*, 320 U. S. 430, IS NOT AFFECTED BY THE LANGUAGE OF THE ILLINOIS SETTLEMENT CONTRACT.

Petitioners take the positive that the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is inapplicable because the Illinois settlement contract contained the following provision: "This settlement does not effect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin." (R. 152) This contract was executed by Mr. Kopp and E. E. McCartin (employer) on November 3, 1943. It should be noted that the contract provides for payment of weekly installments of compensation for a period of 120 weeks which is the full period of compensation provided by Section 8 of the Illinois Workmen's Compensation Act for "the loss of sight of an eye or for permanent and complete loss of its use." No claim is made that Mr. Kopp was not paid the full amount to which he was entitled under the terms of the Illinois Workmen's Compensation Act. (Sec. 145(e) of Ch. 48, Ill. Rev. Stat. 1943)

Respondents respectfully submit that the settlement contract is not subject to the construction placed upon it by petitioners and that the quoted clause does not render the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, inapplicable for the following reasons.

The clause in the settlement contract relied upon by petitioners was intended to mean and by its terms does mean only that if a recovery were possible under the laws of two states and if after obtaining a full recovery under

the Illinois Act Mr. Kopp had any additional rights in Wisconsin, the settlement contract could not be relied upon as anything in the nature of a release of such rights. The clause in question refers to rights that Mr. Kopp "may" have under the Wisconsin Act. It cannot be construed as an agreement that he then had any such rights and most certainly it did not constitute an agreement that he would have any enforceable rights in Wisconsin after obtaining full satisfaction of his cause of action in Illinois.

In support of their position petitioners rely upon a letter written to the Wisconsin Industrial Commission on November 3, 1943, by attorney John H. Page who represented Mr. McCartin (employer) in Illinois. In that letter Mr. Page clearly indicates the position of Mr. McCartin and his insurance carrier by stating: "It has been our thought that since McCartin and Kopp are and have been residents of Rockford, Illinois, for many years and the contract of employment was entered into at Rockford, Illinois, the Illinois Workmen's Compensation Act governs the right to and the amount of compensation payable to Kopp." (R. 169) We submit that the state court correctly answered petitioners' argument including their argument based on that portion of the letter of November 3, 1943, which is quoted at page 6 of petitioners' brief when it said:

> "The insurance carrier, through its attorney replied under date of November 3, 1943, that it understood that if it (the insurance carrier) made payments to claimant under the Illinois Workmen's Compensation Act for this injury, credit would be given for these payments *in the event an award was made to Kopp under the Wisconsin Act.* There is nothing in the letters or the provisions of the settlement contract filed

with the Illinois commission by which the insurance carrier waived any legal rights it had or granted any additional rights to claimant. It merely agreed that if claimant had any legal rights which he could establish in Wisconsin it was his privilege to do so." (R. 184)

After the settlement contract was signed Mr. Kopp voluntarily participated in a proceeding before the Illinois Commission at which time the settlement contract was approved and an order providing for payment of the amount due in a lump sum was entered. (R. 137-140, 186) The approval of the settlement contract resulted in what is, under the Illinois law, in "legal effect an award." *Hartford Accident & Indemnity Co. v. Industrial Comm.*, supra (320 Ill 544, 151 N. E. 495) It is this award and not the settlement contract which constituted a final adjudication of Mr. Kopp's right to compensation for his injury. It is the award and not the settlement contract which became res judicata in Illinois and which must be given full faith and credit in Wisconsin.

Petitioners take the position in their brief that the approved settlement contract "became in legal effect an award reserving rights under the Wisconsin Compensation Act." (p. 7) They then advance the argument that because of the claimed reservation in the Illinois award the Wisconsin Industrial Commission accorded to the Illinois award the same faith and credit it had in Illinois when additional compensation was awarded in Wisconsin. (p. 10) We respectfully contend that this argument is unsound both as to premise and conclusion.

It is elementary that the Illinois Industrial Commission had no power or authority to adjudicate Mr. Kopp's

rights under the Wisconsin Act. Section 15 of the Illinois Act (Sec. 152 of Chap. 48 Ill. Rev. Stat. 1943) provides that "the industrial commission shall administer this act." This statute marks the limit of the jurisdiction of the Illinois Commission. When the settlement contract was submitted for approval the Illinois Commission was concerned only with the question whether the contract provided for a proper disposition of Mr. Kopp's claims under the Illinois Act. The Illinois Commission lacked power to reserve any rights to Mr. Kopp under the laws of any other state and we submit that its approval of the settlement contract could not and did not reserve any rights to Mr. Kopp under the Wisconsin Act. If the Illinois Commission had the power to bind the parties by including a reservation of rights in Wisconsin in its award, it would result in conferring upon that commission the power to create rights under the Wisconsin Act and would, at least in effect, give extraterritorial effect to the laws of Illinois. It is clear that this cannot be done. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 440; *New York L. Ins. Co. v. Head*, 234 U. S. 149, 160-161. If the Illinois Commission had the power to reserve rights in Wisconsin it would follow that they have power to nullify rights in Wisconsin. Certainly no one would claim that if in fact Kopp had rights in Wisconsin after obtaining full satisfaction of his claim in Illinois those rights could be destroyed by any provision in an Illinois award.

The comments of the member of the Illinois Commission who presided at the hearing held in that state clearly indicate that in approving the settlement contract the Illi-

nois Commission did not attempt to reserve any rights in Wisconsin and did not understand that its approval had any such effect. During the Illinois hearing, the commissioner made the following statement to Mr. Kopp:

> "You are intelligent. I will approve the Lump Sum Settlement Petition if you want it but I just want you to understand it is a full settlement and it is final, you cannot make claim * * * in the future against E. E. McCartin under the provisions of the Compensation Act for the injuries you sustained on May 5, 1943, for that injury to the left eye. In other words this completely closes out your case so far as any medical, surgical or hospital expense, or as far as any additional compensation is concerned. * * *." (R. 139, 166)

> "If you are concerned about the Workmens Compensation Act in Wisconsin they have a provision in there this Settlement does not affect any rights the Applicant may have under the Compensation Act of the State of Wisconsin. I do not know what it might mean, what your rights are in the State of Wisconsin—I do not know whether the Wisconsin Act provides for any increase where it has been already closed out in another state, I do not know but that provision is in there. What it is worth I am in no position to advise you. I sit only as a member of the Industrial Commission of the State of Illinois. I do not know what the Wisconsin Act is." (R. 139-140, 167)

Mr. Kopp's reply to this statement by the Illinois commissioner indicates that he understood that he was obtaining full and final satisfaction of his claim as stated by the commissioner and that he fully appreciated at least the possibility that he would have no further claim that could be enforced in Wisconsin. He stated that he understood

the matter and knew what he was doing (R. 140) and further stated:

> "I have been through this matter for the last six months. I have thought it over thoroughly. I would very much appreciate it if you would give me a lump sum. I will take chances on Wisconsin." (R. 140)

Our position that the Illinois Commission's approval of the settlement contract could not and did not result in an award effectively reserving any rights to Mr. Kopp in Wisconsin finds support in the following statement in the opinion in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 440:

> "Here both Texas and Louisiana have undertaken to adjudicate the rights of the same parties arising from a single injury sustained in the course of employment under the same contract. Each state has awarded to respondent compensation for that injury. But whether the Texas award purported also to adjudicate the rights and duties of the parties under the Louisiana law or to control persons and courts in Louisiana is irrelevant to our present inquiry. For Texas is without power to give extraterritorial effect to its laws. * * * The significant question in this case is whether the full faith and credit clause has deprived Louisiana of the power to deny that the Texas award has the same binding effect on the parties in Louisiana as it has in Texas."

As we have indicated it is our position that Illinois could not and did not include an effective reservation of rights under the laws of another state in its award. It is further our position that in any event when the Wisconsin Commission made its award it did not, as petitioners claim,

accord the Illinois award the same faith and credit to which it is entitled in that state.

As we have pointed out under Section A of this brief a compensation award is, under the Illinois law, a final and conclusive adjudication of the right of the injured employee to compensation for his injuries and this is particularly true where, as in this case, the employee obtains an order directing payment of his compensation in a lump sum. There can be no question but what the Illinois award is res judicata and bars all further claims in Illinois and we submit that this would be true even if the award contained a reservation of rights in Wisconsin. The inclusion of a reservation of that kind in the award would not make it any less conclusive in Illinois and would not make further claims possible in that state. The award, even with the claimed reservation included, is res judicata and a complete bar to any further claims for compensation in Illinois. The full faith and credit clause clearly requires that it be given the same effect in Wisconsin. To give it any less effect would violate the clearly established rule that the judgments of a sister state must be given "not some, but full" faith and credit by the courts of the forum. See *Davis v. Davis*, 305 U. S. 32, 40; *Williams v. North Carolina*, 317 U. S. 287, 294.

The clause in the settlement contract relied upon by petitioners refers to any "rights" that Mr. Kopp may have under the Wisconsin Act. (R. 152) It might be admitted that both before and after this contract was executed Mr. Kopp had certain "rights" under the Wisconsin Act. However, when he obtained an award in Illinois which was res judicata and prevented any further recovery, the requirements of full faith and credit came into operation and

prevented him from enforcing his "rights" in Wisconsin. The settlement contract did not preserve anything that Mr. Kopp would not have had without the contract.

We respectfully submit that no splitting of a cause of action is involved in this case and that the settlement contract cannot be construed as containing an agreement that Mr. Kopp could split his cause of action as suggested by petitioners at pages 10-12 of their brief. It is true that only one cause of action arose when Mr. Kopp was injured. However, it does not follow from the fact that remedies were provided by two states that his single cause of action contained divisible items which were subject to "splitting." "The grounds of recovery are the same in one state as in the other—the injury to the employee in the course of his employment." *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 444.

When he commenced a proceeding under the Illinois statute Mr. Kopp did not seek recovery of only certain "items" constituting part of his claim. He sought recovery of his whole claim. The settlement contract did not provide for settlement of part of the claim. It provided for "full and final settlement of any and all claims of every nature and kind that applicant now has or may hereafter have on account of and arising out of said accident and injury, and by virtue of the provisions of the Workmen's Compensation Act of the State of Illinois." (R. 152) The award resulting from approval of the settlement contract was a full and final disposition of Mr. Kopp's entire claim—not part of his claim.

It cannot be said that the Illinois proceedings resulted in a splitting of Mr. Kopp's cause of action merely because the two states each afford a different measure of recovery.

The laws of each state provided a full and not merely a partial recovery. A recovery under the laws of either state results in a recovery of the entire claim and not a recovery of only certain items constituting a part of the claim. If a person injured by the negligence of another commences his action in a court whose juries are known to return verdicts lower than those returned by juries in other courts that are equally available to him, it cannot be said that he is in any way splitting his cause of action.

Mr. Kopp had possible remedies under the Wisconsin and Illinois Acts. When he proceeded in Illinois he did not split his cause of action but rather chose his remedy. He elected to pursue his remedy in Illinois rather than in Wisconsin. This made the following statement of the court in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 444 directly applicable:

> "Respondent was free to pursue his remedy in either state but, having chosen to seek it in Texas, where the award was res judicata, the full faith and credit clause precludes him from again seeking a remedy in Louisiana upon the same grounds."

C.

ILLINOIS HAS NOT HELD THAT IT WILL ALLOW AN AWARD NOTWITHSTANDING A PREVIOUS AWARD IN ANOTHER STATE AND IN ANY EVENT THE FULL FAITH AND CREDIT CLAUSE WOULD PRECLUDE A SECOND AWARD IN ILLINOIS IF (AS IN THE PRESENT CASE) THE FIRST AWARD WAS RES JUDICATA IN THE STATE WHERE RENDERED

Petitioners' argument under Section II of their brief is based upon the assumption that "the Illinois law would not bar a recovery in Illinois notwithstanding a prior award in Wisconsin under the Wisconsin Compensation Act." (page 15) No case in which the Illinois court has sustained the granting of a second award by the Illinois Commission has been cited and we have not been able to find any case so holding. The assumption relied upon by petitioners is based upon the fact that under the Illinois law its Industrial Commission has jurisdiction to grant compensation for injuries sustained outside of the state where the contract of employment is entered into in the state. The argument being that "where the contract is made in Illinois, payment of compensation under the law of some other state would not * * * extinguish compensation rights under the Illinois law" although petitioners concede "the possibility that Illinois *might* rule that pursuing the Wisconsin remedy constituted a renouncing of rights under the Illinois law." (page 14 of petitioners' brief)

We respectfully submit that in view of the fact that Illinois has not held that it will grant a second award even in a case where the contract of employment was made in

that state, petitioners' argument is based on a faulty premise and is without force. And for the same reason the question reserved in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, which is quoted at page 12 of petitioners' brief may also be reserved in this case.

When the question of the effect to be given to the prior award of another state is presented in Illinois there would seem to be no convincing reason why, if proper defenses are raised, Illinois will not be required to hold that the full faith and credit clause precludes a second award for the same injury in that state. The reasoning adopted by this court in support of its decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, will so require. It will further require the same result in any other state so that the reserved question never can become of controlling importance.

We respectfully submit that when one state asserts the power to award compensation under its own law, notwithstanding a prior award under the law of some other jurisdiction but with credit for the amount of the first award, it characterizes not the limited nature of its own award (as petitioners claim) but rather the limited nature of the award of the first state. By assuming the power to make a second award the state involved thereby asserts, in effect, that the employee's rights and the employer's obligations are exclusively under its compensation act. It acknowledges no rights or obligations under the compensation act of the first state which are in any material sense different from or in addition to the rights under its act. It incorrectly relegates the award of the other state to the status of a mere agreement to pay a designated sum in partial satisfaction of what it considers to be the employee's right to compensation. The result might be different if the

state making the second award claimed the right to require payment of the full amount due under the terms of its compensation act without regard for and without allowing credit for the amount of the first award. But no claim is made by petitioners that an injured employee is under any circumstances entitled to a double recovery.

D.

THE PROVISION IN WISCONSIN COMPENSATION ACT FOR PAYMENT OF $75 INTO STATE TREASURY FOR "SECOND INJURY" FUND DOES NOT CONSTITUTE SUFFICIENT GROUNDS FOR CREATION OF AN EXCEPTION TO THE REQUIREMENTS OF THE FULL FAITH AND CREDIT CLAUSE

By their argument under this point petitioners seek to create an exception to the requirements of the full faith and credit clause because Wisconsin has a statute which provides for payment of $75 into its "second injury" fund in certain cases. It will be noted that this statute provides that "in case of the loss or of the total impairment of a hand, arm, foot, leg or eye, the employer shall be required to pay seventy-five dollars into the state treasury." (Sec. 102.59(2), Wis. Stats. 1943) This statute, therefore, only provides for a payment into the state treasury where there is a loss or total impairment of an eye. No loss of an eye is involved in this case and no finding of total impairment of an eye has been made. In its award the Wisconsin Commission found that "no removal of the cataract had been attempted; and * * * the ultimate impairment of vision, if

such removal were attempted, is unknown." (R. 122) The necessary conclusion of the Wisconsin Commission was that "the question of payment to the state fund must also be reserved until determination of the permanent impairment of vision." (R. 123)

It should further be noted that the hearing before the Wisconsin Commission involved only Mr. Kopp's claim for compensation. In the award it is stated that "this matter is pending before the Commission upon application by the employe for an order of award." (R. 120) The Attorney General was not represented at the hearing and no claim on behalf of the state of Wisconsin was involved or considered at the hearing. (R. 121) It was not until after the hearing that the Attorney General made a claim "on behalf of the state fund." (R. 133) There has been no trial of the question whether "the state fund" has any claim in this case. It follows that petitioners seek to create an exception to the requirements of the full faith and credit clause because of the mere possibility that the state of Wisconsin may have an interest to the extent of $75 and before the question as to whether it has such interest has been determined by appropriate proceedings in that state.

In *Williams v. North Carolina*, 317 U. S. 287, 294-295, this court made the following statement regarding exceptions to the requirement of full faith and credit:

> " 'the room left for the play of conflicting policies is a narrow one.' So far as *judgments* are concerned the decisions, as distinguished from dicta, show that the actual exceptions have been few and far between, apart from Haddock v. Haddock. For this Court has been reluctant to admit exceptions in case of *judgments* rendered by the courts of a sister state, since

> the 'very purpose' of Art. 4, Sec. 1 was 'to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation.'"

And in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 438, this court said:

> "We are aware of no such exception in the case of a money judgment rendered in a civil suit. Nor are we aware of any considerations of local policy or law which could rightly be deemed to impair the force and effect which the full faith and credit clause and the Act of Congress require to be given to such a judgment outside the state of its rendition."

In *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 442, this court recognized the "rights" conferred on the employer "by the Texas award and the full faith and credit clause" as being superior to the interests of the state of Louisiana. We respectfully submit that the possible interest of the State of Wisconsin in this case to the extent of $75 could not possibly make this one of the "few" exceptional cases in which the requirements of the full faith and credit clause do not apply.

Petitioners suggest that the problem under the full faith and credit clause is to accommodate the conflicting interests of the two states. If this be true, we submit that the interest of Illinois arising from its responsibility to furnish relief and care to residents of that state who are incapacitated by injuries is far greater than any interest that Wisconsin could have by reason of its requirement

that in selected cases a contribution must be made to its second injury fund.

If and when it is determined that Mr. Kopp has a total impairment of his eye different questions will be presented. It will then be necessary to determine whether the requirement of the Wisconsin Statute (sec. 102.59(2), Stats. 1943) that $75 be paid into the State Treasury when such impairment is established is so far separable from the balance of the Wisconsin Compensation Act as to make it possible for the Attorney General to recover that sum in a proper proceeding even though the full faith and credit clause precludes an additional recovery of compensation by Mr. Kopp. It will be noted that the only claim involved in *Interstate Power Co. v. Industrial Comm.*, 203 Wis. 466, 234 N. W. 889 (cited and discussed at pages 19-21 of petitioners' brief) was a claim by the State of Wisconsin for payment into the State Treasury in a case where a deceased employee left no one wholly dependent for support.

E.

THE DECISION IN *MAGNOLIA PETROLEUM CO. v. HUNT*, 320 U. S. 430, IS BASED ON SOUND LEGAL PRINCIPLES AND SHOULD NOT BE OVERRULED OR LIMITED

In their brief petitioners request that the dissenting opinions in the *Magnolia Petroleum Co. Case* be considered incorporated into their brief in support of the contention that that case should be overruled or limited as to application. We may with equal appropriateness suggest that the majority opinion be incorporated into this brief in support of our contention that the case should not be overruled or limited. We make this suggestion because we are satisfied that the legal principles enumerated and discussed in the majority opinion compelled the result reached by the court and to avoid any necessity for restating those principles.

It is true that in supporting their theories as to what the law should be some writers have criticized the rule announced in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430. However, the author of the exhaustive annotation in 150 American Law Reports, Annotated, 431, whose only apparent purpose is to annotate the law as it actually exists, states that the case is in accord with "the prevailing trend of recent cases." In the annotation referred to the author states: (page 432)

> "The prevailing trend of the recent cases, however, as confirmed by the decision of the United States Supreme Court in *Magnolia Petroleum Co. vs. Hunt* * * * is toward regarding the foreign award as res judicata and entitled to full faith and credit in another

state, so as to preclude the claimant from recovering additional compensation benefits under the applicable statute of another state, the doctrine of election of remedies and estoppel being sometimes invoked to supplement the res judicata doctrine and the full faith and credit provision."

It may be admitted that prior to the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, many state courts, including the Wisconsin Court, had reached the conclusion that an award in one state could not be relied upon as a bar to an additional award in another state. These cases, as well as cases expressing a contrary view, are collected in annotations in 101 A. L. R. 1445 and 150 A. L. R. 431. It will be noted that in many of these cases the requirements of full faith and credit were not relied upon as a defense. In view of the fact that the applicability of the requirements of full faith and credit is obviously presented in cases of this kind we submit that state court decisions cannot be relied upon either as establishing a correct policy or as being sufficient to support the rule announced in Section 403 of the American Law Institute, *Restatement of Conflict of Laws.* This is true because of the well established rule that this court is the final arbiter of questions relating to the applicability of the Constitutional requirement of full faith and credit and of the extent of the exceptions to the requirement. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, *Alaska Packers Asso. v. Industrial Acci. Commission*, 294 U. S. 547; *Titus v. Wallick*, 306 U. S. 291. The question could not be regarded as authoritatively settled until it was presented to and decided by this court.

At page 28 of their brief petitioners contend that "two statutorily-created causes of action came into existence as the result of one accident." This conclusion and the argument based thereon are, of course, directly contrary to the argument advanced at pages 10-12 of petitioners' brief, that the settlement contract constituted an agreement that "the employee might split his cause of action." No convincing reasons are assigned by petitioners in support of their contention that two causes of action resulted in this case. As stated by this court in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 444, "the grounds of recovery are the same in one state as in the other—the injury to the employee in the course of his employment." Only one primary right is involved—the employee's right to be reimbursed to some extent for his economic loss resulting from an industrial accident. The fact that the application of different remedies (proceedings in either Illinois or Wisconsin) might be applied does not mean that there are several causes of action. (1 Am. Jur. page 458) Mutually exclusive remedies for the enforcement of a single wrong are well known to the law. A typical example is a case where the plaintiff may either base his action upon a contract or waive the contract and base his action upon the tort.

Petitioners concede that Wisconsin must give credit for the amount of the Illinois award. By so doing they recognize that the Illinois award is entitled to at least some res judicata effect and are willing to give that award some faith and credit in Wisconsin. However, as we have pointed out at page 13 of this brief the Constitutional requirement is that "not some, but full" faith and credit must be given to the judgments of a sister state. (Davis v. Davis, supra, 305 U. S. 32, 40) If the Illinois award is, as petition-

ers admit, entitled to some faith and credit, it must follow that it is entitled to full faith and credit.

We respectfully submit that no persuasive reasons why an exception to the Constitutional requirements of full faith and credit should be created in workmen's compensation cases have been suggested by petitioners. We fail to see why the important requirements of full faith and credit should not be applied to claims for workmen's compensation with the same force to which they are applied to negligence actions. In fact there would appear to be more potent reasons for applying these requirements to cases where no fault on the part of the party against whom the claim is made is involved than for applying them in negligence cases where fault on the part of the defendant constitutes the very foundation for the action. The economic results are the same whether the workman is injured while performing services for his employer or while off duty. Even a disappointingly low verdict in a negligence case constitutes a complete bar to a second recovery in another forum. We fail to find any practical or legal reason why a recovery of compensation should not have the same effect particularly where, as in this case, the employee voluntarily chooses the forum knowing in advance the results which may be obtained in the two states. The rule contended for by petitioners would permit an injured employee to obtain a second trial of the issues relating to the extent and permanency of his injuries and make it possible for him to harass the employer with successive claims so that the employer could not determine whether he had fulfilled his obligation to compensate his employee without going to the expense of trying the same issues at least twice.

The purpose of a workmen's compensation act is to provide not only a remedy for employees which is both expeditious and independent of proof of fault "but also for employers a liable which is limited and determinate." *Bradford Electric Light Co. v. Clapper*, 286 U. S. 145, 159. We submit that when Mr. Kopp's rights were finally determined in Illinois the employer acquired a right at least in the nature of a property right which was of equal dignity with the employee's rights. This would seem to follow from the language of the Illinois Statute which provides that "the compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility" of the employer. (Sec. 148 of Chap. 48, Ill. Rev. Stat. 1943) That the right thus acquired by the employer is an important right and one that is entitled to protection cannot be denied. The following language used by Mr. Justice Cardozo in the opinion in *Loucks v. Standard Oil Co.*, 224 N. Y. 99, 120 N. E. 198, 202, has a direct application to the right thus acquired by the employer:

> "The sovereign in its discretion may refuse its aid to the foreign right. St. Louis, I. M. & So. Ry. Co. v. Taylor, 210 U. S. 281, 28 Sup. Ct. 616, 52 L. Ed. 1061; Dougherty v. Am. McKenna Process Co., 255 Ill. 369, 99 N. E. 619, L. R. A. 1915F, 955, Ann. Cas. 1913D, 568. From this it has been an easy step to the conclusion that a like freedom of choice has been confided to the courts. But that, of course, is a false view. Cuba R. R. Co. v. Crosby, supra, 222 U. S. 478, 32 Sup. Ct. 132, 56 L. Ed. 274, 38 L. R. A. (N. S.) 40. The courts are not free to refuse to enforce a foreign right at the pleasure of the judges, to suit the individual notion of expediency or fairness. They do not close their doors, unless help would violate some fundamental principle of jus-

tice, some prevalent conception of good morals, some deep-rooted tradition of the common weal."

It cannot be claimed that the granting full faith and credit to the Illinois award in this case violates any fundamental principle of justice or any public policy of Wisconsin. This is true because the public policy of Wisconsin as established by its legislature is that where the necessary conditions of liability exist "the recovery of compensation pursuant to the provision of this chapter (relating to workmen's compensation) shall be the exclusive remedy against the employer." (Sec. 102.03(2), Wis. Stats. 1943)

CONCLUSION

We respectfully submit that the judgment of the Supreme Court of Wisconsin should be affirmed.

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SUPREME COURT OF THE UNITED STATES

No. 270.—October Term, 1946.

Industrial Commission of Wisconsin, Leo Thomas Kopp and State of Wisconsin, Petitioners, v. E. E. McCartin and Continental Casualty Company.	On Writ of Certiorari to the Supreme Court of the State of Wisconsin.

[March 31, 1947.]

Mr. Justice Murphy delivered the opinion of the Court.

In *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, this Court had occasion to consider the effect of the full faith and credit clause of the Constitution of the United States where awards are sought under the workmen's compensation laws of two states. This case presents another facet of that problem.

The facts are undisputed. Leo Thomas Kopp worked as a bricklayer for E. E. McCartin. Both were residents of Illinois. Pursuant to a contract made in Illinois, Kopp worked for McCartin on a building job in Wisconsin. He drove back and forth between his home in Illinois and his work in Wisconsin. While thus employed in Wisconsin, Kopp suffered an injury to his left eye. On June 7, 1943, he filed an application for adjustment of claim with the Industrial Commission of Wisconsin. McCartin and his insurance carrier entered an objection to the jurisdiction of the Wisconsin Commission to hear the claim. Then on July 20, 1943, Kopp filed an application for adjustment of claim with the Industrial Commission of Illinois, in which the general nature of the dispute was given as "Whether Illinois or Wisconsin has jurisdiction in my case."

Under date of October 11, 1943, the Wisconsin Commission wrote the insurance carrier that Kopp had been

informed that, so far as Wisconsin law was concerned, he was entitled to proceed under the Illinois Workmen's Compensation Act (Ill. Rev. Stat. 1943, Ch. 48, §§ 138–172) and thereafter claim compensation under the Wisconsin Workmen's Compensation Act (Wis. Stat. 1945, Ch. 102), with credit to be given for the amount paid him pursuant to the Illinois Act. A copy of this letter was sent to Kopp. Counsel for the insurance carrier replied on November 3, 1943. It was there stated that the insurance carrier understood that if payments were made by it to Kopp under the Illinois statute credit would be given for those payments in the event an award was made to Kopp under the Wisconsin Act; and with that understanding, the insurance carrier was proceeding to pay Kopp compensation under the Illinois statute.

On November 3, 1943, a settlement contract was signed by Kopp and McCartin. The parties therein agreed that the sum of $2,112 was to be paid to Kopp in full and final settlement of any and all claims arising out of Kopp's injury by virtue of the Illinois Workmen's Compensation Act. The contract also stated: "This settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin."

The settlement contract and a petition by Kopp that the amount due be paid to him in a lump sum were filed with the Illinois Commission on November 29, 1943. A hearing was held before a Commissioner on December 3, in the course of which attention was called to the reservation of rights in Wisconsin. The presiding Commissioner informed Kopp that he did not know what effect the reservation had or what Kopp's rights were under the Wisconsin statute. Kopp replied that he would appreciate receiving the lump sum under the Illinois law and that he would "take chances on Wisconsin." Following the hearing, the Commissioner approved the settlement con-

tract and the petition for a lump sum payment. Kopp received payment on December 7 in the amount specified in the settlement contract plus a small additional sum for temporary disability. Thereafter, on January 10, 1944, a formal order was entered by the Illinois Commission directing payment of the lump sum of $2,112. The circumstances of the entry of this later order, after payment had been made in fact, are not disclosed. No petition to review the settlement contract or lump sum payment was filed and no action to secure a review of the formal order was taken.

In the meantime, on December 20, 1943, this Court's decision in *Magnolia Petroleum Co. v. Hunt, supra*, was rendered. The Wisconsin Commission then held a hearing on February 20, 1944, on Kopp's application before it. McCartin and the insurance carrier filed an amended answer, contending that under the full faith and credit clause the Wisconsin proceedings were barred by the award and payment under the Illinois Act; reliance was placed upon the *Magnolia Petroleum Co.* case. The Commission overruled this objection and ordered the payment to Kopp of certain benefits, after giving credit for the sums paid under the Illinois Act.

The Circuit Court for Dane County, Wisconsin, set aside the Wisconsin Commission's order on the authority of the *Magnolia Petroleum Co.* case. On appeal, the Supreme Court of Wisconsin affirmed the lower court's judgment on the same authority. 248 Wis. 570, 22 N. W. 2d 522. We granted certiorari to determine the applicability of the full faith and credit clause, as interpreted in the *Magnolia Petroleum Co.* case, to the facts of this case.

It is clear, in the absence of a prior award in Wisconsin, that the compensation paid to the employee under the Illinois Workmen's Compensation Act was constitutionally proper from the full faith and credit standpoint. Illinois was the state where the parties entered

into the employment contract and its legitimate concern with that employer-employee relationship permitted it to apply its own statute even though the injury occurred elsewhere. *Alaska Packers Assn.* v. *Industrial Accident Comm'n*, 294 U. S. 532; *Cardillo* v. *Liberty Mutual Ins. Co.*, 330 U. S. —. At the same time, in view of the fact that the accident took place in Wisconsin, any full faith and credit questions that might have been raised had compensation first been awarded under the Wisconsin Workmen's Compensation Act are answered by *Pacific Employers Ins. Co.* v. *Industrial Accident Commission*, 306 U. S. 493. The troublesome problem that arises here is whether the compensation paid under the Illinois statute raises a full faith and credit bar to a subsequent award in Wisconsin for an additional amount.

If it were apparent that the Illinois award was intended to be final and conclusive of all the employee's rights against the employer and the insurer growing out of the injury, the decision in the *Magnolia Petroleum Co.* case would be controlling here. The Court there found that the compensation award under the Texas Workmen's Compensation Law was made explicitly in lieu of any other recovery for injury to the employee, precluding even a recovery under the laws of another state. See *Bradford Elec. Co.* v. *Clapper*, 286 U. S. 145, 153. And since the Texas award had the degree of finality contemplated by the full faith and credit clause, it was held that Louisiana was constitutionally forbidden from entering a subsequent award under its statute. But we do not believe that the same situation exists in this case, the Illinois award being different in its nature and effect from the Texas award in the *Magnolia* case.

The Illinois Workmen's Compensation Act was concededly applicable under the circumstances of this case. Section 3 of that Act provides that it shall apply automatically and without election to all employers and em-

ployees engaged in businesses or enterprises such as those involving the erection or construction of any structure. At the time when he was injured, Kopp was doing mason work for his employer in connection with the erection of houses. Section 5 then provides that the term "employee" includes those persons "whose employment is outside the State of Illinois where the contract of hire is made within the State of Illinois.". Kopp was such an employee, having been hired in Illinois and injured while employed in Wisconsin.

Section 6 states that "No common law or statutory right to recover damages for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this Act, . . ." This section has been interpreted to mean that, in situations to which the Act applies, the right of action against the employer under the Illinois common law or under the Illinois Personal Injuries Act (Ill. Rev. Stat. 1943, Ch. 70, §§ 1, 2) has been abolished. *Mississippi River Power Co.* v. *Industrial Commission*, 289 Ill. 353, 124 N. E. 552; *Faber* v. *Industrial Commission*, 352 Ill. 115, 185 N. E. 255. To that extent, the Act provides an exclusive remedy.

But there is nothing in the statute or in the decisions thereunder to indicate that it was designed to preclude any recovery by proceedings brought in another state for injuries received there in the course of an Illinois employment. Cf. *Bradford Elec. Co.* v. *Clapper*, *supra*; *Cole* v. *Industrial Commission*, 353 Ill. 415, 187 N. E. 520. And in light of the rule that workmen's compensation laws are to be liberally construed in furtherance of the purpose for which they were enacted, *Baltimore & Phila. Steamboat Co.* v. *Norton*, 284 U. S. 408, 414, we should not readily interpret such a statute so as to cut off an employee's right to sue under other legislation passed for his benefit. Only

that it is completely exclusive,

some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction. Especially is this true where the rights affected are those arising under legislation of another state and where the full faith and credit provision of the United States Constitution is brought into play. See *Ohio* v. *Chattanooga Boiler Co.*, 289 U. S. 439.

We need not rest our decision, however, solely upon the absence of any provision or construction of the Illinois Workmen's Compensation Act forbidding an employee from seeking alternative or additional relief under the laws of another state. There is even stronger evidence that the employee is free to ask for additional compensation in Wisconsin. That evidence is in the Illinois award itself, an award which is acknowledged to have been made in compliance with the Illinois statute.

Here the employer and the employee entered into a settlement contract fixing the amount of compensation to which the employee was entitled under the Illinois statute, thereby avoiding the expense and delay of litigating the matter. This contract, together with the employee's petition for a lump sum payment, was approved by one of the Commissioners of the Illinois Industrial Commission. By that approval, the agreement became "in legal effect an award." *Hartford Accident Co.* v. *Industrial Commission*, 320 Ill. 544, 151 N. E. 495; *Michelson* v. *Industrial Commission*, 375 Ill. 462, 31 N. E. 2d 940. Under Illinois law, such awards are described as *res judicata* on the matters thus adjudicated and agreed upon, precluding the Commission from subsequently reviewing the awards or setting them aside. *Centralia Coal Co.* v. *Industrial Commission*, 297 Ill. 451, 130 N. E. 727; *Stromberg Motor Device Co.* v. *Industrial Commission*, 305 Ill. 619, 137 N. E. 462; *Lewin Metals Corp* v. *Industrial Commission*, 360 Ill. 371, 196 N. E. 482; *Trigg* v. *Industrial Commission*, 364 Ill. 581, 5 N. E. 2d 394.

One of the provisions in the settlement contract which became the award was the statement that "This settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin." That statement was made a part of the contract at the request of the employee, who had been informed by the Wisconsin Commission that he was entitled to claim an additional amount of compensation in Wisconsin after recovering in Illinois. See *Interstate Power Co.* v. *Industrial Commission*, 203 Wis. 466, 234 N. W. 889; *Salvation Army* v. *Industrial Commission*, 219 Wis. 343, 263 N. W. 349; *Wisconsin Bridge & Iron Co.* v. *Industrial Commission*, 222 Wis. 194, 268 N. W. 134. The employer's insurance carrier was likewise informed, and all the parties proceeded on the assumption that the employee was attempting to recover compensation under the statutes of both Illinois and Wisconsin, with credit to be given in Wisconsin for any sum recovered in Illinois. In furtherance of this common understanding, the above statement was inserted in the Illinois settlement contract and was brought to the attention of the Industrial Commissioner before he approved the contract. The Commissioner confessed that he did not know the meaning of this provision, but he did not order it stricken. Rather he approved it for whatever it was worth.

This contract provision saving the rights of the employee in Wisconsin thus became part of the Illinois award, an award which has achieved finality in the absence of a timely appeal. This provision means more than might be implied in the case of an ordinary judgment or decree. Any party, of course, has the right to seek another judgment or decree, however inconsistent or futile such an attempt might be; and it takes no reservation in the original judgment or decree to give him that right. But when the reservation in this award is read against the background of the Illinois Workmen's Compensation Act, it becomes

clear that the reservation spells out what we believe to be implicit in that Act—namely, that an Illinois workmen's compensation award of the type here involved does not foreclose an additional award under the laws of another state. And in the setting of this case, that fact is of decisive significance.

Since this Illinois award is final and conclusive only as to rights arising in Illinois, Wisconsin is free under the full faith and credit clause to grant an award of compensation in accord with its own laws. *Magnolia Petroleum Co.* v. *Hunt*, *supra*, thus does not control this case.

Reversed.

MR. JUSTICE RUTLEDGE concurs in the result.